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## Climate Refugees: Establishing Legal Responses and U.S. Policy Possibilities

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Climate Refugees: Establishing Legal Responses and U.S. Policy Possibilities

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## Introduction

There is a strong consensus in the scientific community that climate change is occurring. Climate change is largely being caused by anthropogenic reasons and there are potential future harms from it (Marquart-Pyatt, Shwom et al. 2011, 40). One of the most significant of these future harms is the creation of climate refugees. “Climate Refugee” describes a person who is forced to leave their home or community due to changes to the local environment, such as rising sea levels, drought, famine, or other effects of climate change (National Geographic Society 2012). A climate refugee can migrate either internally or internationally. Estimates of the amount of future climate refugees vary substantially due to differing definitions of who constitutes a climate refugee, but according to a Cornell journal, at the current rate of human fertility increase, populations in low-elevation coastal zones, land usage and degradation, and CO<sub>2</sub> emission rates, 1.4 billion people could become climate refugees by 2060 (Geisler and Currens 2017, 7).

While there is a great deal of academic discussion on the subject of climate refugees, forced migration, and the many components of this complex topic, policy responses have not followed this trend. Under the current global institutions, climate refugees are not granted legal refugee rights and there are no specific legal frameworks protecting them at the international or national levels (Miller 2017). This paper will focus on immigration and refugee policy of the United States and make policy recommendations for the U.S. to implement in order to provide legal rights and protections to climate refugees. For the purpose of this paper, protections will be defined as “any positive action, whether or not based on legal obligations, undertaken by States on behalf of persons at risk ... that aim at obtaining full respect for the rights of the

individual in accordance with the letter and spirit of applicable bodies of law” (RCM Guide 2016, 5). Although a majority of the literature regarding policy providing protections to climate refugees focuses on the international level, the implementation of climate refugee policy by the United States would set a precedent for how other nations may implement such a policy and motivate others to take similar actions.

The first section of this paper provides an overview of the academic discussion and background of legal aspects of climate refugees. This section first provides an overview of potential harms associated with climate refugees, who and how many people will be impacted, and a review of the current system of international governance over climate refugees. Second, this section outlines terminology and narratives used in the discussion of climate refugees. Finally, this section analyzes the current system of immigration and refugees in the United States and the current state of climate refugees in the Americas.

The second section of this paper reviews three different policy options that have either been proposed or already implemented. The first option examined legal and policy responses to increased migration within the European Union framework and focused on utilizing *ad hoc* mechanisms. The second policy option looks at the different visa programs that New Zealand has implemented and proposed that provide increased visa options to individuals from Pacific Island nations that are being displaced by rising sea levels. The final policy option reviews the concept of utilizing regional agreements and focuses on the Regional Conference on Migration, which has provided guides and frameworks to member countries in the Americas on dealing with environmental disaster-

related migrants. Each of the options is looked at from the perspective of implementation within the United States and the weaknesses of each.

The final section of the paper provides policy recommendations for the United States to implement based on the reviewed literature, evaluated policy options, and overall assessment of mechanisms pertaining to climate refugees. Six primary recommendations are put forward to provide the most effective system of legal protections for climate refugees within the United States. By following these six recommendations, lawmakers will create the most comprehensive strategy dealing with climate refugees in the world, making the United States an international leader on the issue.

### **Literature Review**

#### *Causes and Harms Associated with Climate Refugees*

Climate change has been found to cause many issues that may lead to forced migration including: drought, flooding due to changing rain patterns, rising sea levels, decrease in water quality from flooding and worsening storms, loss of easily accessible portable water, increased temperatures, and salination due to drought or sea water infiltration (Manou and Mihi 2017, 3-4). Without adequate policy, forced migration may lead to an array of issues for humans including: overpopulation, conflict over resources, cultural clashes and increased discrimination against migrants, decreased public health as a result of overcrowding, inadequate services provided by the government, increased spread of diseases, and increased political differences or disputes (2017, 5). Regardless of which issues will specifically occur, the task of creating policy properly addressing climate refugees with its complex human rights and political issues, is a challenging one.

*Who and How Many?*

“In Bangladesh alone, roughly 75 million people, or about 40% of its projected population for the year 2100, would be affected” (Byravan and Rajan 2015, 5). This is just one of many studies attempting to predict how many people will become refugees if climate change continues to worsen at its current rate. A commonly cited study by the United Nations High Commissioner for Refugees (UNHCR) estimates 250 million people displaced from their homes due to climate change by 2050 (Funkhouser 2016). Although some have said there have not been any “reliable global estimates of past and current migration flows” in response to climate change (Wilkinson et. al 2016, 3), there have been many individual cases documented. While there are many numbers of climate refugees that have been cited, without a proper definition of what constitutes a climate refugee, none of these estimates portray the same results. Currently, almost every study has differing classifications of who qualifies as a climate refugee. Regardless of the terminology or definitions used, as will be discussed in a later section, the estimates of people displaced by climate change are far greater than any historical numbers of refugees the international community has experienced. The United Nations Human Rights Council annual report found an estimated 65.6 million people forcibly displaced from their homes by the end of 2016, the highest since WWII (Edwards 2017). Even at a current high point, previously cited numbers of 250 million-1.4 billion people displaced by climate change over the next 30-40 years surpass this number greatly.

Despite the lack of specific numbers of climate refugees, researchers do have strong ideas of who will be affected at greater rates. Due to historical settlements along coastlines, most of the world’s megacities exist along the coast. “About 10 percent of the

world's population lives within a mile or so of the shoreline and below 10 meters in elevation" (Byravan and Rajan 2015, 4). This, however, is not where the majority of climate refugees are currently coming from. Those who are most at risk to become climate refugees are from the developing world (Kane-Hartnett 2015). The effects of climate change disproportionately impact developing nations (2015). For example, small island states see the effects of rising sea levels first. The island nation of Kiribati will likely experience the first complete exodus of people due to climate change (2015). Worsening droughts also impact developing nations at higher rates, such as many African nations, due to climate change intensifying local weather. Another primary reason the developing world is disproportionately impacted by the effects of climate change is caused by the development status of their nation. Developing nations generally have "limited resources, a reliance on agricultural and maritime-based livelihoods, and generally weak governance structures" (Kane-Hartnett 2015). Governments of developing nations do not have the ability or resources to internally relocate citizens while maintaining their current standard of living and legal rights, as those who live in developed nations, such as the United States do. There will of course be issues from internal migration caused by climate change in the United States, but the people impacted will not have to face the threats of homelessness, unemployment, or statelessness (2015).

### *Current International Governance of Climate Refugees*

Under the current global institutions, refugees are given legal rights primarily from the 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees (Biermann and Boas 2010). These define a refugee as,

A person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership or a particular social

group or political opinion, is outside the country of his nationality and is unable, or owing to such fear is unwilling, to avail himself of the protection of that country (UNHCR 2010).

These five grounds for protection do not include climate change as a reason one can seek refuge. In one case, a New Zealand court rejected a Tuvaluan family claiming refugee status due to the effects of climate change, because their claim didn't fit the 1951 Refugee Convention (Ferris 2017, 13). One reason some refugee advocates and legal experts oppose expanding the five grounds for refugee status to include climate change refugees is the fear it will weaken the rights and overall status of "refugee" (2017, 14). Others, primarily developed nations, have expressed concerns that if the Convention definition is expanded, it will lead to mass amounts of people attempting to move to their land (2017, 15).

In 2007, the UNHCR, which primarily deals with legal refugees, extended its activities to include internally displaced people (IDPs) and other groups outside of refugees. IDPs refers to people who have fled within the borders of their nation, for any number of reasons, but are still under the protection of their government (Biermann and Boas 2010, 72). Under the current regime, most climate refugees "could be conceptualized as internally displaced people," which the UNHCR have created programs for, but according to Biermann and Boas, this is only a descriptive term and states are under no obligation to provide assistance to them (2010, 73). The UNHCR also does not have the capabilities to deal with the number of people who could be classified as environmental IDPs that currently exist, let alone the number of climate refugees that will arise in the near future. With responsibility to provide protections to climate refugees

resting primarily on their home nations, climate refugees, especially those from developing nations, have little to no legal rights or protection under international law.

### *Terminology and Narrative of Climate Refugees*

Due to the lack of legal rights under international law, as well as the fact that concept of climate refugees has only emerged within the last 30 years, the terminology, narratives, and definitions surrounding climate refugees is one that is highly discussed. The discussion around “environmental refugees” primarily began in 1985 with the publication of a paper by El-Hinnawi (Berchin, et al. 2017). He defined environmental refugees as “those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardize their existence and/or seriously affects the quality of their life” (2017, 148). Throughout the years, multiple authors, such as Renaud et al. in 2007, have proposed three categories of environmental migration in attempt to create stronger typology (Kraler et al. 2011, 32). The first category is “environmental emergency migrants.” This includes people who are forced to flee rapidly in avoidance of an environmental event such as natural disasters. These people typically remain within their country or are able to return for those who move across borders (2011, 32). The second category is “environmentally forced migrants.” This category is most strongly relates to climate refugees, as it refers to people who don’t have an option but to leave their home nation, but typically as a slower pace than the first category. They cannot return to their home nation for various reasons such as rising sea levels, extreme soil degradation, or socio-economic factors (2011, 32). The third category is “environmentally motivated migrants,” which includes people who preemptively leave

their home nation because of a “constantly deteriorating environment,” but is not necessarily the last option available to them. This category could be associated with the concept “migration as adaptation” and is most often driven by socio-economic factors (Kraler et al. 2011, 33).

The second and third categories above are what has been the subject of most discussion in the field. One of the most debated and critiqued concepts is the usage of the term “refugee” when discussing forced migration. Many claim the term climate refugee is flawed and adds to socio-political inequality and injustice. Bettini et al. argue that using climate refugee undermines human mobility, is not identifiable because of an inability to single out an environmental stressor as the cause of a migration, and is not practical within the existing legal systems (Bettini et al. 2016, 351). Others focusing on legality argue refugee is a “legal misnomer” that will weaken refugee law if used in this way. The connotations already associated with the term refugee are also seen as a threat by some thinkers. The conversation around policy could turn to “they” are dangerous, or “we” are developed (Mayer 2014, 30). The cause of migration does not matter; it’s the increased number of seeking refuge, which leads to xenophobia and racialization (2014, 31). Kraler et al. state that for the simple reason of the term refugee being challenged in academic and political debate, we should adopt a more general term of “environmentally induced migration” (Kraler et al. 2011, 33).

In contrast, “climate refugee” has its proponents. Mayer disputes the “legal misnomer” calling it “a misunderstanding of law as an immutable set of given norms” (Mayer 2014, 30). The 1951 Convention does not claim the exclusive definition of refugee. Legal notions and the interpretations of different laws are always open to

negotiation. There are so many challenges with creating new categories of international legal protections, let alone those associated with determining the environmental causes of migration. The use of refugee would at the very least reduce the many barriers that would occur before proper legal protections are put in place (2014, 30-32). Biermann and Boas also support the term “climate refugee” for similar reasons. As the effects of climate change become increasingly apparent, such as island nations ceasing to exist, people will have to find refuge outside of their homes. Seeking refuge already has global mechanisms attached to it and creating new terminology or statuses for these instances would be inefficient and difficult (Biermann and Boas 2010, 64).

### *U.S. Refugee Policy*

One of the first modern examples of climate refugees took place on the small Alaskan island of Sarichef. In 2004, all of the inhabitants of the island were forced to relocate to mainland when the islands permafrost began to thaw due to rising temperatures and the island began to sink (Jerneck 2009). Despite such tangible events within the United States, refugee policy has remained rigid and exclusionary. According to the Immigration and Nationality Act, a refugee is defined as “a person who is unable or unwilling to return to his or her home country because of a well-founded fear of persecution due to race, membership in a particular social group, political opinion, religion, or national origin” (American Immigration Council 2015, 1). The president, in consultation with Congress, sets a ceiling for the number of maximum refugees that will be granted admission for each fiscal year. President Trump set a ceiling of 45,000 for fiscal year 2018, down from the 85,000 set in 2016 (Meckler 2018). In the first three months of the year, the US only admitted 5,000 refugees, which is on pace for admitting

far less than the 45,000 maximum (2018). The U.S. refugee program has three principal categories classifying refugees and their priority (American Immigration Council 2015, 3). Priority one contains individuals those with the most compelling persecution needs with no viable solutions. Priority two consists of groups of “special concern” to the United States, which are selected by the Department of State. The current groups include “persons from the former Soviet Union, Cuba, Democratic Republic of Congo, Iraq, Iran, Burma, and Bhutan.” Priority three includes relatives of refugees who are already within the United States (2015, 3). Refugees undergo extensive screening, interviewing, medical examinations, and other security clearances prior to the Refugee Admissions Program determining placement for each refugee. The Department of State has cited the process taking an average of 18-24 months to complete, which was reduced slightly by the Obama Administration by improving interagency coordinating, but many of the issues returned upon President Trump taking office (2015, 4).

#### *Climate Refugees in the Americas*

While a majority of research on climate refugees focuses on global policy, migration to Europe, and refugees from African, Asian, and Island nations, there have recently been those looking at how the United States and Americas will be impacted. Todd Miller, an immigration and border journalist, interviewed a group of Honduran men attempting to cross the U.S.-Mexico border. When asked why they were heading to the United States, they responded simply “there was no rain” (Miller 2017). Extreme drought is rising throughout all of Central America and Mexico. For example, in 2015, around 400,000 people in a region of Honduras didn’t receive any rain and no crops grew, causing extreme famine (2017). There have been many studies over the last ten years that

portray an influx in immigration directly correlated with drought, such as that done by Colunga and Rivera (2011). Their study shows the increase in migration from Mexico to the United States in response to drought and the lack of Mexican policy to assist the most vulnerable populations. Drought isn't the only issue causing people to migrate north. Extreme weather has been shown to increase with climate change and be a major contributor to forced migration. One study estimates 470,000 Puerto Ricans, or 14% of the population, will leave the island by 2019 due to increased damage from hurricanes and extreme weather (Melendez and Hinojosa 2017, 1). Nearly all of these people are projected to move to the United States.

The primary response by the United States to this increase in immigration has been walls and surveillance technology. Even before Donald Trump ran for office, there was 700 miles of border walls constructed along the U.S.-Mexico border, with the number of Border Patrol agents increasing exponentially (Miller 2017). Border walls are not only occurring in the United States as way to cope with increased immigration. According to Elisabeth Vallet, there are 70 border walls around the world, up from 15 in 1988 (2017). Border walls are showing how government officials view immigration and climate refugees as a threat to national security. Rather than preparing policy and practices to provide protections to future immigrants, the Department of Homeland Security and U.S. military view climate change as a "threat multiplier" and are preparing for long-term security issues, with mass population movements as one of the main sources of risk (2017).

### **Policy Option Review**

After reviewing the current U.S. refugee policy and attitudes and actions the United States has taken towards immigrants, it may be difficult to imagine what type policy could be adapted to provide legal protections for climate refugees and how that could be implemented into U.S. law. The following section will review three policy ideas on how to provide protections to climate refugees, an analysis of the strength of protection of each, and how each may be implemented in U.S. law. The first policy idea reviewed legal and policy responses to increased migration within the European Union framework and focused on utilizing *ad hoc* mechanisms. The second policy option comes from the special “Pacific Access Category Resident Visa” and recently proposed special refugee visa program implemented by New Zealand. The third policy idea centers around the creation of regional agreements with a focus on the Americas through the “Guide To Effective Practices for Regional Conference on Migration Member Countries.”

*European Union Climate Refugee Policy Recommendation*

“Climate Refugees: Legal and Policy Responses to Environmentally Induced Migration” by Albert Kraler, Tatiana Cernei, and Marion Noack is a study published by the European Parliament’s Committee on Civil Liberties, Justice, and Home Affairs in 2011. It examines the legal and policy aspects of climate refugees and evaluates the current EU frameworks in order to recommend ways it can be modified to provide an improved response to climate refugees. The study begins by reviewing the different types of environmental migration and terminology used within the field. They outline three primary stages of migration, which are rapid-onset, slow-onset, and sea level rise. After their review of the different narratives used and types of environmental migration, they propose utilizing the term “environmentally induced migrant.” They claim this term is

better than using “climate refugee” due to the term “refugee” being challenged both in academic literature and amongst politicians (Kraler et al. 2011, 31). The study continues by reviewing the policy debate and policy possibilities within the EU system. One key finding is that different stages of environmentally induced migration need to be addressed with different policies. They do not think it is likely that an extension of the Geneva Refugee Convention or a legal framework specific to environmentally induced migration are the best options or even possible (2011, 36). Finally, the study analyzes the European Union legal and policy frameworks and reviewed different response options under this current framework.

The final section of the study outlines the author’s recommendations for specific mechanisms the EU should use in dealing with climate refugees. They first suggest an *ad hoc* mechanism as a temporary form of protection. There are specific provisions within EU policy that concern third country persons or stateless persons that can be interpreted or revised as being able to apply to climate refugees (Kraler et al. 2011). The Temporary Protection Directive may also be applicable to provide protections to mass amounts of climate refugees, but is only “activated” after a commission proposal and Council decision. Therefore, there needs to be political consensus amongst all nations, which will be difficult. *Ad hoc* mechanisms may also be produced with a rights-based approach within “existing instruments regarding legal and irregular migration” (Kraler, et al. 2011, 74). The Charter on Fundamental Rights of the European Union stresses the right to life and right to family reunification, which could be expanded to include climate refugees. This Charter already provides “a normative framework for evaluating existing policies

and practices and developing novel political responses” to climate refugees in a variety of ways (Kraler et al. 2011, 75).

In addition to *ad hoc* mechanisms, they suggest the EU increase promotion of resettlement of climate refugees and to “further develop the Joint EU Resettlement Programme” (Kraler, et al. 2011, 75). They also discuss the Global Approach to address climate refugees at great length. Some measures discussed include “strengthening the adaptation and resilience capacities of third countries to reduce the vulnerability of affected populations and enhancing the protection of environmental displaced individuals outside the European Union” (Kraler et al. 2011, 75). The EU should provide increased support to local governments in order to address migration as an adaptation strategy, facilitate migration, ensure rights of migrants are protected, and create overall strong mobility partnerships for bilateral cooperation.

This study provides a strong review and insight into the possibilities of dealing with climate refugees, but also has some noticeable weaknesses. The reasoning stated for not using the term “climate refugee” is very weak. They simply created a new term in order to avoid any sort of conflict amongst academics. Without discussing the strengths of using “refugee,” connotation of “refugee” versus “migrant,” and the political institutions developed around the term, the study failed to provide adequate evidence for this choice. As far as the recommendations provided, there are some obvious gaps. The different *ad hoc* mechanisms discussed are strong within the existing EU framework and appear to be some of the fastest to achieve within their political system. For example, expansion of the Charter, which already has an established system of policy review and implementation, would be advantageous, but the discussed Charter is not legally binding

to all EU nations, only recommended (Kraler et al. 2011, 64). An obvious weakness of an *ad hoc* approach is the nature of an action being taken for a specific issue. Although this issue could be viewed as climate refugees, since there are so many different causes of climate refugee and different stages, as Kraler et al. outline, it is unlikely that this approach will be able to provide legal protections to every case of individuals seeking climate refuge. The recommendations made other than *ad hoc* mechanisms will not provide the necessary means of filling the gaps of *ad hoc* policies. The first primary recommendation is simply a promotion of action by EU nations, which may or may not actual take any shape. The Global Approach the study suggests does provide strong recommendations of providing assistance to local government, but does not specifically address how the EU will create the proper framework for climate refugees. The study also came to the conclusion during the policy possibilities review section that a global approach or expanding global institutions would be the least likely and most difficult option to implement.

### *New Zealand Visa Programs*

New Zealand is a leader in many parts of the fight against climate change. In late 2017, the nation proposed the implementation of a special refugee visa specifically for those impacted by the effects of climate change (Pearlman 2017). This visa program in addition to their “Pacific Access Category Resident Visa,” which has been in place since 2010, create the framework for a potential program that could be adapted by the United States. First, looking at existing “Pacific Access Category Resident Visa,” New Zealand has created a program that allows people from certain Pacific island nations to apply for residency. Although this program was not specifically created with the intent of

providing rights to climate refugees, those impacted by the program are some of the most at-risk nations of rising sea-levels and could easily be implemented in another nation as doing just that. Residents of Kiribati, Tuvalu, Tonga, Samoa, and Fiji are all given the opportunity to apply for a ballot that grants a resident visa (Immigration NZ Operational Manual S1.50 2018). Applicants must find employment within New Zealand, meet a minimum level of English language ability, meet health requirement, and meet a minimum income requirement if they have dependents. A quota is set annually for the number of applicants drawn from the ballot from each country and visas include applicants partner and dependents (Immigration NZ Operational Manual S1.50 2018).

Prime Minister Jacinda Ardern announced the plans for a special refugee visa for those forced to migrate due to rising sea levels in October 2017 (Pearlman 2017). The new visa category would allow for 100 visas granted to individuals from Pacific island nations via lottery annually who are displaced by climate change. This may not seem like a large number, but New Zealand's overall refugee quota in 2017 was 750 (Anderson 2017). New Zealand Green party leader James Shaw said that this would be “an experimental humanitarian visa category” and is intended to spark public debate and be used as a role model for courts or activists (Noack 2017).

These visa programs have been praised by many environmentalists and human rights activists, but have also come with problems and skepticism. The requirement of securing a job prior to moving to New Zealand for the “Pacific Access Category Resident Visa” has been the most disputed. Many employers work with the New Zealand immigration department, but only recruit a small number of those who have been selected to receive visas (Dateline Pacific 2017). This has led to employers illegally selling job

offers to those who need residency. In the proposed climate refugee visa program, one may argue a lottery will not be an effective means of protecting those facing the greatest risk. The program must be implemented in a way an individual or community that has been displaced can have higher chances of being granted visas rather than those individuals having the same chance of winning a visa as someone who may be able to live in their home community for a longer period of time.

Although the political system and overall ideology differ between the United States and New Zealand, the creation of special visas is one possible within the U.S. system. The United States could create a separate visa to provide protections to those who are displaced for a specific reason. The displaced could come from certain regions, as New Zealand dictated, or a broader range of people. Review processes and guidelines could be specific to this visa program, while still providing the same rights as they do to other refugees.

#### *Regional Agreements and RCM Guide*

In the academic review of environmental migration, one strategy proposed to address forced migration, in contrast from a global approach, is the creation of regional agreements. McFarland wrote a set of “guiding principles” to consider while creating policies addressing climate refugees. Some of these principles include collecting more data, considering the advantages of planned relocation, making development assistance more adaptive, focusing on migrants’ needs in the receiving communities, prioritizing the creation of jobs, and creating regional agreements (McFarland 2017, 220). Focusing on regional efforts, rather than worldwide, will help make dealing with issues more feasible. Forced environmental migration often requires crossing multiple international borders

“with potential legal and security ramifications ... those seeking to cross borders will be hampered by neighboring countries’ regulations and policies” (2017, 221). Regional planning would also develop “safety valves” for migrants to travel. This would determine safe paths for people to travel and regional agreements could “provide the financial, political, and logistical support these countries may need” (2017, 222). Regional migration agreements could be used to “promote migration as an adaptation measure, implement displacement preventing measures,” and create mechanisms such as “national quotas or seasonal workers programmes” (Puscas 2018, 9).

When focusing on the Americas, one key pathway discussed in the creation of a regional agreement addressing climate refugees is the Regional Conference on Migration (RCM). “The RCM brings together representatives of States, international organizations, and non-governmental organizations to address migration in a consultative, informal, and non-standard-setting environment” (Puscas 2018, 8). Member countries of the RCM include: Belize, Canada, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and the United States; as well as a handful of observer states (RCM Guide 2016). In 2016, the RCM developed a “Guide to Effective Practices for RCM Member Countries: protection for persons moving across borders in the context of disaster.” The guide is composed of four parts. Part one outlines the purpose, common understandings and core principles, and the scope of situations of disaster, beneficiaries, and applicability of existing bodies of law (2016, 8). The primary purpose is to share information to RCM member countries that they can use to respond to the needs of disaster-affected foreigner (2016, 9). Part two of the guide reviews protections of foreigners from disaster-affected countries on humanitarian grounds. It

identifies who is being considered, standards of treatment for disaster-affected foreigners, how to activate humanitarian protection measures, and effective practices of protection for foreigners arriving in outside countries and those already abroad (2016, 13). Part three of the guide reviews protections of foreign migrants either living within or traveling through a disaster-affected country. Finally, part four of the guide discusses the cooperation of states when a humanitarian call is made. Any RCM member country that has been affected by a disaster has the rights to request humanitarian protection measures from any other RCM member country and there will be regional cooperation in any form of activities that utilize the RCM framework (2016, 27).

Although the RCM Guide is currently written to address migration caused by natural disasters specifically, the guide could be expanded in a variety of ways to protect climate refugees. The guide's "approach to disaster displacement could be specifically developed by building on the framework of reciprocity and legal obligations in the well-established parallel field of disaster response law" (Kalin and Cantor 2017, 4). Dedicating an RCM meeting to the subject of displacement caused by climate change could lead to a new guide written, an exchange of effective practices taken in cases of cross-border displacement, or new measures taken to reduce risk of displacement (2017, 5). With regional frameworks already set in place, the RCM member countries have the opportunity to utilize their platform to set a precedent for how other regions are able to address climate refugees.

As the United States is an RCM member country, they have the opportunity to lead this discussion of expanding the scope of the RCM Guide or agenda. That being said, the guide and the RCM have some weaknesses that need to be addressed. The first,

and most significant, is that the RCM Guide is not a legally binding document and does not provide any state obligations, but rather, recommendations of measures states can take. This is a major gap in providing protections, as individual states, as seen multiple times in international law, may not adhere to legally binding treaties, let alone voluntary ones. The current guide has been disseminated amongst member countries, but it is uncertain what the impact will be, as it is still very new. Another weakness of the RCM Guide and regional agreements in general, is conflicting regional policies and national policies. In order for a regional agreement on climate refugees in be most effective, all ratifying states must have similar enough refugee or immigration laws. If, for example, the United States refugee process takes significantly longer than other states in the region, other states may not be able to accommodate the amount of climate refugees they have entering their borders prior to being able to pass through to the next border. Some states, such as the United States and Canada, would also have to agree to contribute a disproportionate amount of resources and assistance, as they are the wealthiest and most developed RCM member country. Finally, although the RCM Guide works within the established frameworks for disaster migrants and some of those policies and practices do provide an adequate template for addressing climate refugees, they are simply too temporary for the long-term measures needed.

### **Conclusions and Recommendations**

The final section of this paper will briefly review the previous sections prior to presenting the policy recommendations for consideration by the United States to provide legal protections to climate refugees. The review of literature has shown the many effects of climate change that may lead to forced migration and some of the many potential

consequences associated with increased migration. There is no reliable way of estimating the amount of people who already have and will become climate refugees because there is no consensus or legal definition on what constitutes a climate refugee. Some of the more reputable studies have shown anywhere from 250 million-1.4 billion people displaced from climate change by 2050 (Funkhouser 2016) and (Geisler and Currens 2017, 7). Research has also shown how developing nations will be disproportionately impacted by the effects of climate change and displaced from their homes due to location, local environments, and developing status (Kane-Hartnett 2015). Despite the large amount of literature regarding the subject, climate refugees have little to no legal rights or protection under international law. Individuals cannot claim refugee status under the current regime and are simply not mentioned within any context of asylum, immigration, or other legal frameworks (Biermann and Boas 2010, 72).

As there are no legal definitions or academic consensus on what constitutes climate refugees, there is much debate on the terminology used when discussing the subject at hand. Whether these individuals are referred to as “refugees” or another term such as “migrant” is the most disputed area of the subject. Opponents of “refugee” commonly cite usage will weaken refugee law and the negative connotations that may be associated with the term (Bettini et al. 2016, 351). Proponents often cite the challenges associated with creating new categories of international legal protections, differing interpretations of laws, and dispute arguments made of connotations (Biermann and Boas 2010, 64).

United States refugee policy has shown to be very strict and limiting on the number of refugees granted admission each fiscal year. Within the three principal

categories classifying refugees and their priority, those displaced by climate change do not fit within any category of the law (American Immigration Council 2015, 3). Within the Americas, many people attempting to migrate north from Central America and Mexico in the United States are doing so because of drought and extreme weather (Miller 2017). Many of these immigrants, who are currently illegal, could be classified as climate refugees and granted rights if policy were enacted. This hasn't been the case, as the United States has reacted to increased immigration by increasing border security and viewing migration and climate change as security issues (2017).

Following the literature review, three different policy options were reviewed in order to determine what policies nations have or could be taking in provide protections to climate refugees. First, a study reviewing the mechanisms that should be utilized by the EU to deal with climate refugees was analyzed. The studies recommendations relied heavily on various *ad hoc* mechanisms by expanding different existing policies to include climate refugees (Kraler et al. 2011, 75). It also suggested increased promotion of resettlement and a global approach to supporting and strengthening local governments (2011, 75). Much of the reasoning and outcomes cited in the study were convincing in providing strong protections to climate refugees, but the *ad hoc* approach taken had many noticeable gaps.

The second policy reviewed was the visa programs of New Zealand. The existing "Pacific Access Category Resident Visa" and the proposed special refugee visa both grant residents of certain Pacific island nations the opportunity to receive resident visas if selected through a lottery (Immigration NZ Operational Manual 2018). Many have heavily praised the programs, as they are the first of their kind, but here are those who are

skeptical of the program as well. Some of the requirements that come along with the visas, such as securing a job prior to arrival, are viewed as far too difficult to achieve (Dateline Pacific 2017). The lottery system also does not prioritize those facing the greatest risks.

The third policy option reviewed considered regional agreements as a viable strategy to implementing climate refugee policy. The Regional Conference on Migration created a guide for best practices on providing protection of migrants displaced by environmental disaster in the Americas (RCM Guide 2016). The RCM Guide could be expanded to cover climate refugees through the already established frameworks. RCM countries also have the opportunity to create new guides, exchange knowledge, assist each other in reducing risks of displacement, and setting precedent to other regions on protecting climate refugees (Kalin and Cantor 2017, 4). Issues that arise from regional agreements and the RCM Guide include the guide not being legally binding, conflicting national policies, some nations contributing disproportionate amounts of resources, and the RCM Guide needing to be substantially updated to properly address climate refugees.

### *Policy Recommendations*

The review of literature and policy options shows the complexity of issues and options to address climate refugees. As the international debate will not likely be solved in the near future, the United States is able to move forward with the implementation of climate refugee policy and, in doing so, set a precedent for how other nations may implement such a policy and motivate others to take similar actions. Based on the literature review, policy options review, and overall assessment of mechanisms pertaining to climate refugees, the following set of recommendations is put forth to the U.S.

government with the intention of providing legal protections to climate refugees in a practical manner.

- 1. The United States should utilize the term “climate refugee” over other terms such as “environmental migrant.”** The arguments made against utilize “climate refugee” are overall unconvincing. One of the primary arguments made against “refugee” is that it does not fit within the existing legal framework and will weaken refugee law. This can easily be disputed, as law can evolve over time to adapt to new circumstances that did not exist at the time of enactment. Climate refugee does not have to fit within the same category or follow the exact established refugee convention. The other commonly cited argument against “climate refugee” is the negative connotations associated with the term “refugee.” Although these negative connotations do exist, these thinkers do not acknowledge the positive connotations or negative connotations associated with the term “migrant.” The term “refugee” has the implication that there is no other option available, whereas “migrant” implies a choice. Whether an individual is forced to migrate due to their home community being destroyed by rising sea levels, severe droughts preventing the growth of crops, or any other known impact of climate change, they are doing so in order to seek “refuge.” To deny an individual the right to claim refuge, despite being unable to return to their home community, is inherently wrong.
- 2. U.S. law needs to recognize climate change as a legitimate and separate reason to migrate and seek refuge.** Within the current Refugee Admissions Program, climate refugees would not be able to claim refugee status. Recognition

of the effects of climate change as legitimate motivation to seek refugee status is required prior to any policy implementation. Climate refugees should be recognized as separate from the established reasons to seek refuge in order to avoid confliction with current policy.

- 3. The United States should establish a governmental body to ensure successful and efficient planning of climate refugee policies.** In order to develop the most effective climate refugee policy, the establishment of a new governmental body is necessary. The issue of climate refugees is multifaceted and would not fit within one existing body or agency. An intersectional body would allow for the most knowledgeable individuals to work towards planning climate refugee policy on the national and international levels to suggest to lawmakers.
- 4. The United States must establish a separate climate refugee visa program that does not have such a limited quota ceiling set in place and has a significantly reduced time of admission.** The current refugee admission program has a multitude of issues that would make dealing with the considerable amount of projected future climate refugees. The creation of a new refugee policy will ensure current refugee policies are not weakened. The new visa program must allow for a significantly higher quota of annual admission in order to properly keep up with and address the issue of climate refugees. Reduced time for admission is also necessary to keep on this same pace. These steps will benefit surrounding nations as well as the U.S by leading to greater cooperation and ease at the regional level.

5. **The climate refugee visa program must have a focus on planned relocation.**

Planned relocation refers to the placement of climate refugees, assistance in moving, and providing the ability for individuals to create new lives. This will allow for the ability to prevent climate refugees from settling in already over-populated cities, it will prioritize jobs for refugees, and have a set plans for the resources needed in communities receiving individuals.

6. **The United States must continue to work with the RCM and lead the effort to create a new RCM Guide that offers protections for climate refugees.** As a

majority of climate refugees coming to the United States will be arriving from the Americas, utilizing regional agreements will be in the best interest of all RCM member countries and the United States. With the previously mentioned climate refugee visa program, the United States can utilize their membership as an RCM country to strengthen relationships with other member countries. This will allow the U.S. to assist in establishing programs in other member countries to review climate refugees' cases and expedite the time for admission in new countries. The United States can also work with other member countries to actually reduce the amount of individuals who are seeking refuge within the United States itself. The United States can provide resources and information to other member countries to improve their infrastructure, which can combat some of the effects of climate change. They can also assist countries that do not currently have the resources or structures to support large amount of climate refugees, such as Mexico, in establishing new programs and policies. This will allow for more climate refugees settling in other nations and less of a direct reliance on the United States to

provide all support. In order to maximize this regional body, the United States must lead the effort to create a legally binding document that will thoroughly address all aspect of providing legal protections to climate refugees in the Americas. This type of legally binding regional document will also reduce the amount of climate refugees migrating to the United States, as other regions around the world may be stimulated to adapt similar policy allowing for less reliance on the United States alone.

Through these six recommendations, lawmakers will create the most comprehensive strategy dealing with climate refugees in the world, making the United States an international leader in the area. This would also strengthen the status of the United States in the international community, which leads to stronger international relationships and economic benefits. At the core of climate refugees is an issue of justice. Individuals who come from developing nations that have contributed to climate change at insignificant rates compared to the United States are those who fear statelessness. It is the duty and best interest of the lawmakers in the United States to create comprehensive policy providing legal protections to climate refugees. Waiting until the effects of climate change worsen and the projected 250 million individuals are forced to leave their home communities will only cause greater issues and strain U.S. resources. The discussion of climate refugee policy in the United States needs to begin immediately in order to mitigate and protect individuals and communities.

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