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**Submission by Human Rights First to the U.N. Special Rapporteur on Protection of Human Rights in the Context of Climate Change**

**Addressing the Human Rights Implications of Climate Change Displacement**

**November 2022**

This document has been produced on the basis of Human Rights First’s experience representing, researching, and advocating for refugees and victims of human rights abuses in need of asylum, resettlement, or other humanitarian protections in the United States. This submission focuses on the significant gaps in U.S. protections and pathways for persons displaced by climate change, the failures to uphold existing asylum protections for refugees who are, in some cases, displaced in part due to climate change, and the need for strengthened and additional safe and regular migration processes and pathways for people affected by climate change who are forced to migrate across borders. This submission does not address the many critical steps that should be taken to protect the human rights of the greater numbers of people who will be internally displaced due to climate change.

Providing solutions for persons displaced by climate-related disasters is crucial to ensuring their safety and dignity, meeting international obligations not to return individuals to serious harm, and ensuring respect for their fundamental human rights when they are forced to cross borders. Human Rights First recommends that, in order to uphold their refugee and human rights commitments under international law and develop collective solutions to climate displacement, states, including the United States, should eliminate illegal pushback policies,<sup>1</sup> ensure access to asylum and other protection at borders, and implement complementary protection processes and safe pathways that provide rights-respecting, durable solutions for climate-displaced people.

**Climate displacement and human rights**

In 2015, former U.N. High Commissioner for Human Rights Mary Robinson described climate change as “probably the greatest human rights challenge of the 21st century.”<sup>2</sup> The current High Commissioner for Human Rights, Volker Türk, has recently called for human rights to be at the heart of efforts to tackle climate change.<sup>3</sup> The Paris Agreement confirms that in addressing climate change, states must “respect, promote and consider their respective obligations on human rights . . . [and] migrants.”<sup>4</sup> Multiple U.N. Special Rapporteurs on human rights have concluded that ecological crises “can negatively affect an array of human rights,”<sup>5</sup> including, the “rights to life, health, housing, food, water and education, cultural rights and collective rights, such as the rights of indigenous peoples and the right to self-determination.”<sup>6</sup> “Those impacts contribute to displacement, and displacement further impacts the enjoyment of human rights.”<sup>7</sup>

Climate change and related displacement intersect with, and disproportionately affect, women and girls,<sup>8</sup> Indigenous peoples,<sup>9</sup> racially, ethnically, and nationally marginalized groups,<sup>10</sup> and persons with disabilities,<sup>11</sup> among others, “resulting in differentiated impacts . . . and exacerbating pre-existing inequalities and vulnerabilities.”<sup>12</sup> With respect to this displacement, “[t]he increased vulnerabilities of migrants caused by the adverse effects of climate change and the need for approaches that respect, protect and fulfil human rights are well documented.”<sup>13</sup> Dozens of U.N. Special Rapporteurs and experts have recently affirmed the need for the “full and effective participation of indigenous peoples and civil society, including human rights defenders, grassroots organisations and women-led organisations” in climate-action negotiations.<sup>14</sup>

“[H]uman rights law can establish grounds of admission and stay for migrants, which give effect to international human rights obligations and principles,” including the right to private and family life and of family unity.<sup>15</sup> As the Special Rapporteur on migrants has noted, “[e]xisting international frameworks, mechanisms and practices to govern safe and regular migration in relation to climate change are limited.”<sup>16</sup> In advance of the 27th U.N. Climate Change conference, a group of Special Rapporteurs and other U.N. experts have called for “expand[ed]

opportunities for safe migration, including through a general right of admission and stay for people displaced by climate change, and pathways to citizenship.”<sup>17</sup> Addressing intersections among groups targeted for human rights abuses, “climate change and migration requires an integrated multisectoral approach that brings together global, regional, national and local efforts.”<sup>18</sup>

### **U.S. legislation, policies, and practices currently in place**

Around the world too few states have initiated measures to protect people displaced in the context of climate change. States should be encouraged to consider and take positive steps to protect climate-displaced people. For instance, in May 2022, the government of Argentina introduced a humanitarian visa program for people displaced by disasters in Mexico, Central America, and the Caribbean.<sup>19</sup> While the United States (which this submission focuses on given Human Rights First’s work) has some mechanisms in place that can help provide limited protection to some people displaced by climate change, tremendous gaps remain. Existing mechanisms themselves are often deficient and lack essential human rights protections, including those relating to family unity, the right to work, and the ability to receive more stable and durable status that put people on a path to citizenship. Some examples of these limited U.S. mechanisms include:

- **U.S. Refugee Admissions Program (USRAP):** Like other refugee resettlement initiatives around the world, USRAP could facilitate resettlement of some refugees impacted by climate displacement. The U.S. resettlement system applies to people who meet the U.S. law definition of a refugee (based on the Refugee Convention), and while some refugees have been displaced or at risk partly due to climate change, others will not meet this definition so additional relocation pathways will be needed. Moreover, serious delays and backlogs as well as the failure to meet resettlement goals remain a significant barrier to quickly responding to the needs of displaced refugees.
- **Humanitarian Parole:** While the United States has on occasion used “parole” to bring to the United States some people for “urgent humanitarian reasons or significant public benefit,”<sup>20</sup> such as through its Uniting for Ukraine program,<sup>21</sup> Operation Allies Welcome,<sup>22</sup> or Haitian orphan parole program following the 2010 earthquake,<sup>23</sup> U.S. parole mechanisms are of limited duration and do not themselves provide a path to permanent legal status.
- **Asylum:** U.S. law allows people who meet the U.S. law definition of a “refugee” (based on the Refugee Convention definition) to be granted asylum,<sup>24</sup> a status that allows subsequent application for permanent residence and eventual naturalization, as well as the ability to petition for a spouse and children. While people impacted by climate displacement who also meet the definition of a “refugee” can and should be granted U.S. asylum, U.S. immigration law still does not have a complementary protection provision for people impacted by climate change who do not otherwise qualify for refugee protection.
- **Temporary Protected Status (TPS):** For populations already physically inside the country, the United States has a temporary protection mechanism that can apply to people from a specifically designated country, including where “an earthquake, flood, drought . . . or other environmental disaster” results “in a substantial, but temporary, disruption of living conditions in the area affected.”<sup>25</sup> But the process requires decisions by U.S. agencies (which are “susceptible to significant political influence”<sup>26</sup>) and requires requests by home governments for designation in the case of environmental disasters.<sup>27</sup> TPS only applies to people already in the United States, not to future arrivals (though redesignations are possible) and does not include provisions to petition for a spouse or children, nor to secure more stable permanent residence or naturalization.

The United States also has a range of employment or work visas, though they are generally highly limited, flawed, backlogged, and delayed.<sup>28</sup>

## **U.S. pushback policies endanger refugees – including those displaced by climate change**

People seeking asylum—including those impacted by climate displacement—continue to be turned away from protection, through illegal pushbacks and policies that violate international refugee and human rights law. A report by the Special Rapporteur on migrants recently highlighted these pushback policies around the world.<sup>29</sup>

In the United States, these illegal policies include: the Title 42 policy,<sup>30</sup> which has been used to block and expel migrants and asylum seekers at the U.S.-Mexico border without access to the U.S. asylum system or refugee protection screenings;<sup>31</sup> the (recently terminated) Migrant Protection Protocols,<sup>32</sup> commonly known as Remain in Mexico,<sup>33</sup> which forced asylum seekers and migrants to await U.S. immigration court proceedings in dangerous border regions of Mexico; and “metering”<sup>34</sup> – the U.S. government’s policy of intentionally reducing the number of asylum seekers processed at ports of entry, leaving many stranded for months in danger in Mexico. For example, the Title 42 policy blocked from seeking U.S. asylum a schoolteacher and human rights defender from the Indigenous Pech people of Honduras who had fled death threats for his efforts to protect his community’s traditional lands and the murder of his brother who was also a community land defender,<sup>35</sup> as climate change has increased pressures on and displacement of Indigenous and Afro-descendent communities in Honduras.<sup>36</sup>

Many refugees “forced to flee countries experiencing climate-affected stresses may be particularly vulnerable to persecution as traditionally defined.”<sup>37</sup> Indeed, the U.N. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has noted that:

Environmental racism and climate injustice interact with other forms of social exclusion, such as discrimination on the grounds of gender, age and disability. Intersectional analyses of environmental and climate-related human rights violations should recognize that women, older persons, persons with disabilities, and gender and sexually diverse persons who are members of racially marginalized peoples face distinct human rights violations.<sup>38</sup>

These asylum pushback policies also exacerbate harms for individuals stranded in danger in Mexico. Asylum seekers and other migrants blocked in or expelled to Mexico under these policies have been murdered, raped, assaulted, and kidnapped.<sup>39</sup> Many are stranded in brutal conditions without safe and secure housing, adequate medical care, or sufficient food.<sup>40</sup> These grave dangers and the inability to request asylum at ports of entry along the border push asylum seekers toward informal crossings away from official border posts<sup>41</sup> - crossings made more dangerous by climate change.<sup>42</sup> Attempts to seek protection in the United States have become increasingly deadly. At least 853 migrants and asylum seekers died crossing the U.S.-Mexico border in FY 2022, the highest death toll since the U.S. government began keeping records in 1998.<sup>43</sup>

## **Potential policies and practices that can and should provide protection**

To protect the human rights of people displaced by climate disasters, states should significantly expand opportunities for safe migration. As noted above, U.N. experts recently recommended expansion “through a general right of admission and stay for people displaced by climate change, and pathways to citizenship.”<sup>44</sup> States should take steps that include:

- **Consult with and ensure the full and effective participation of displaced persons**, including Indigenous peoples, human rights defenders, civil society, and impacted community-based organizations, in decision-making processes at all levels. Their voices must be heard.
- In all efforts to enhance and establish policies to address climate-related displacement, **consider and uphold the human rights** of women and girls, elderly persons, people with disabilities, Indigenous peoples, marginalized racial, ethnic, and national groups, and other individuals and groups disparately impacted by climate change. Family unity must also be protected.

- **Uphold refugee law and the right to seek asylum.** States must comply with international refugee and human rights law and treaties – existing protections that should and do include some people who are impacted by climate change. States should incorporate UNHCR guidance regarding “claims for international protection made in the context of the adverse effects of climate change and disasters”<sup>45</sup> into determinations of eligibility for asylum and refugee status. This includes providing guidance and training to adjudicators on how the impacts of climate change produce and exacerbate risks of persecution on the basis of race, religion, nationality, membership of a particular social group, or political opinion. In addition, states—including the United States—must end asylum pushbacks, the misuse of public health to deny access to asylum (like the U.S. Title 42 policy),<sup>46</sup> and other measures that undermine refugee and human rights law.
  
- **Provide complementary protection.** States that do not yet have complementary protection systems must create them. Existing mechanisms should be strengthened and adjusted to ensure protection for people impacted by climate change who do not otherwise qualify for refugee protection. As UNHCR explained in its guidance on climate, in countries that are not covered by regional treaties<sup>47</sup> that extend refugee protections to persons displaced by adverse climatic events, individuals who face “a real risk of being subjected to serious harm” (including violations of Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR) guaranteeing the right to life and prohibiting torture and cruel, inhuman or degrading treatment) may be entitled to complementary forms of protection from return under the prohibition on *refoulement*.<sup>48</sup> The October 2021 White House Report on the Impact of Climate Change on Migration stated that the United States has “a national interest in creating a new safe and regular pathway for individualized humanitarian protection in the United States for individuals who establish that they are fleeing serious, credible threats to their life or physical integrity, including as a result of the direct or indirect impacts of climate change” and recommends exploring with Congress the need for additional protection as well as the evaluation of the potential for reforms to the TPS statute.<sup>49</sup>
  - **Adopt complementary protection standards** in line with human rights obligations under the ICCPR and in parallel with existing refugee and asylum protections.<sup>50</sup> A person granted complementary protection should receive a stable legal status that provides for family unity, prompt right to work, and a path to citizenship, and should not receive a lesser legal status than those provided asylum and refugee protection.<sup>51</sup>
  - **Strengthen existing temporary protection mechanisms** to ensure they provide for family unity and access to a more stable, durable status. For example, the gaps in U.S. TPS should be addressed to ensure a range of improvements, including family unity and a pathway to permanent residence and citizenship. In longer-term displacement situations, where for instance a country of origin is unable to stabilize or adapt to climate change, protection that is only temporary will be insufficient.<sup>52</sup>
  
- **Create safe pathways.** Existing pathways to migration for people displaced by climatic disasters are woefully insufficient. States should create safe pathways that uphold family unity and provide lasting, stable legal status, but must never use the existence of these mechanisms as an excuse to subvert the right to seek asylum or their obligations to prevent *refoulement*. As U.N. experts recently recommended, these mechanisms should include “pathways to citizenship.”<sup>53</sup>
  - **Ensure family unity and access to lasting, stable status.** State policies used to relocate people impacted by climate displacement across borders must ensure family unity and should include relocation of family members, not only immediate family, but also elderly parents, family members with disabilities, and other extended family. Relocated persons should also be able to subsequently apply for relocation of such family members. People should not be left in precarious situations without stable status. Existing mechanisms should be strengthened, or new mechanisms created, that provide access to a more stable, durable status and naturalization.

- **Never use safe pathways to justify subversion of refoulement prohibitions or the human right to seek asylum.** As states implement more safe and regular pathways to protection for refugees and climate-displaced people, the creation of such pathways must not be used to trample on or deny the right to seek asylum – or other human rights protections. As UNHCR, IOM and UNICEF recently stressed, in the wake of the U.S. decision to turn away and expel to danger people seeking asylum from Venezuela, the creation of a new pathway (in this case a limited parole program for Venezuelans) “cannot come at the expense of the fundamental human right to seek asylum.”<sup>54</sup>
- **Adjust existing refugee resettlement systems to consider climate**, provide expedited resettlement when needed, and take steps to include as resettlement priorities refugees who are at risk or impacted by climate change. For example, several U.S. groups (including Human Rights First) urged the Biden administration to designate several refugee populations as “P2” priorities, which would allow more direct access to U.S. resettlement, given that these populations “are at increased risk from climate impacts.”<sup>55</sup> Concerningly, however, neither the State Department’s report on proposed refugee admissions for 2023, nor the U.S. Presidential Determination on refugee resettlement, address refugees impacted by climate change.<sup>56</sup>
- The U.N. Special Rapporteur on the human rights of migrants has also recommended that the use of **“visas (humanitarian, work or study)” and “visa waivers for specific populations”** can “[r]educe the vulnerability of migrants by promoting regular pathways for migration.”<sup>57</sup>

<sup>1</sup> U.N. Special Rapporteur on the Human Rights of Migrants, *Report on means to address the human rights impact of pushbacks of migrants on land and at sea*. A/HRC/47/30. 12 May 2021. <https://www.ohchr.org/en/special-procedures/sr-migrants/report-means-address-human-rights-impact-pushbacks-migrants-land-and-sea>.

<sup>2</sup> Office of the High Commissioner for Refugees. *Understanding Human Rights and Climate Change*. 2015. <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>.

<sup>3</sup> U.N. High Commissioner for Human Rights. *Human rights must be at the heart of action to tackle climate change, Türk urges*. 2 November 2022. <https://www.ohchr.org/en/press-releases/2022/11/human-rights-must-be-heart-action-tackle-climate-change-turk-urges>.

<sup>4</sup> Paris Agreement to the United Nations Framework Convention on Climate Change. 12 December 2015. T.I.A.S. No. 16-1104. Preamble. [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf).

<sup>5</sup> U.N. Special Rapporteur on the Human Rights of Migrants. *Report of the Special Rapporteur on the human rights of migrants*. A/77/189. 19 July 2022. p.8, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/431/49/PDF/N2243149.pdf?OpenElement>.

<sup>6</sup> *Id.* at p.5.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at p.12.

<sup>9</sup> U.N. Special Rapporteur on the Rights of Indigenous Peoples. *Report of the Special Rapporteur on the rights of indigenous peoples*. A/HRC/36/46. 1 November 2017. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/330/97/PDF/G1733097.pdf>.

<sup>10</sup> U.N. Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on ecological crisis climate justice and racial justice*. A/77/2990. 25 October 2022. p.3. <https://www.ohchr.org/en/press-releases/2022/11/global-climate-crisis-racial-justice-crisis-un-expert>.

<sup>11</sup> *Report of the Special Rapporteur on the human rights of migrants*. A/77/189, at p.14.

<sup>12</sup> U.N. Special Rapporteur on the Human Rights of Internally Displaced Persons. *Human rights of internally displaced persons*. A/75/207. 21 July 2020. p.11. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/189/85/PDF/N2018985.pdf>.

<sup>13</sup> *Report of the Special Rapporteur on the human rights of migrants*. A/77/189, p.8.

<sup>14</sup> Office of the High Commissioner for Human Rights. *COP27: Urgent need to respect human rights in all climate change action, say UN experts*. 4 November 2022. <https://www.ohchr.org/en/statements/2022/11/cop27-urgent-need-respect-human-rights-all-climate-change-action-say-un-experts>.

<sup>15</sup> *Report of the Special Rapporteur on the human rights of migrants*. A/77/189. p.5.

<sup>16</sup> *Id.* at p. 10.

<sup>17</sup> *COP27: Urgent need to respect human rights in all climate change action, say UN experts*.

<sup>18</sup> *Report of the Special Rapporteur on the human rights of migrants*. A/77/189. p.10.

<sup>19</sup> Disposición 891/2022. Boletín Oficial de la República de Argentina. 16 May 2022. <https://www.boletinoficial.gob.ar/detalleAviso/primera/262784/20220519>.

<sup>20</sup> 8 U.S.C. § 1152(d)(5).

<sup>21</sup> U.S. Dep’t of Homeland Security, *Uniting for Ukraine*. <https://www.dhs.gov/ukraine> (last accessed 3 November 2022).

<sup>22</sup> U.S. Dep’t of Homeland Security, *Operation Allies Welcome*. <https://www.dhs.gov/allieswelcome> (last accessed 3 November 2022).

- <sup>23</sup> U.S. Dep't of Homeland Security, *Secretary Napolitano Announces Humanitarian Parole Policy for Certain Haitian Orphans*. 18 January 2010. <https://www.dhs.gov/news/2010/01/18/secretary-announces-humanitarian-parole-policy-certain-haitian-orphans>.
- <sup>24</sup> See 8 U.S.C. § 1158 (asylum); 8 U.S.C. 1101(a)(42)(A) (defining "refugee").
- <sup>25</sup> 8 U.S.C. § 1254a(b)(1)(B).
- <sup>26</sup> Joan Fitzpatrick, *Temporary Protection of Refugees: Elements of a Formalized Regime*. 94 (2) Amer. J. of Int'l L., 279, at 285 (Apr. 2000).
- <sup>27</sup> 8 U.S.C. § 1254a(b)(1)(B)(iii).
- <sup>28</sup> See, e.g., David J. Bier, *Processing Backlogs in the U.S. Immigration System: Describing the Scale of the Problem*. CATO INSTITUTE. 6 October 2022. <https://www.cato.org/briefing-paper/processing-backlogs-us-immigration-system-describing-scale-problem>; David J. Bier, *Visa Interview Wait Times Reach New Highs: 247 Days for Visitors/Business Travelers*, CATO INSTITUTE. 19 July 2022. <https://www.cato.org/blog/visa-interview-wait-times-reach-new-highs-247-days-visitors/business-travelers>.
- <sup>29</sup> *Report on means to address the human rights impact of pushbacks of migrants on land and at sea*. 12 May 2021.
- <sup>30</sup> See, e.g., U.S. Dep't of Health and Human Services, Centers for Disease Control and Prevention, *Order Suspending the Right to Introduce Certain Persons from Countries where a Quarantinable Communicable Disease Exists*. 2 August 2021. <https://www.cdc.gov/coronavirus/2019-ncov/downloads/CDC-Order-Suspending-Right-to-Introduce-Final-8-2-21.pdf>. First issued in 2020 under the Trump administration, the Biden administration recently terminated the Title 42 order, but it remains in place under court order pending appeal in the case. U.S. Dep't of Health and Human Services, Centers for Disease Control and Prevention, *Public Health Determination and Order Regarding the Right to Introduce Certain Persons from Countries where a Quarantinable Communicable Disease Exists*. Centers for Disease Control and Prevention. 1 April 2022. <https://www.cdc.gov/coronavirus/2019-ncov/cdcresponse/Final-CDC-Order-Prohibiting-Introduction-of-Persons.pdf>; *Louisiana v. Centers for Disease Control and Prevention*. No. 22-CV-00885 (W.D. LA, May 5, 2022). <https://www.courthousenews.com/wp-content/uploads/2022/05/order-granting-injunction-against-ending-use-of-title-42.pdf>.
- <sup>31</sup> See, Lucas Guttentag, *Coronavirus Border Expulsions: CDC's Assault on Asylum Seekers and Unaccompanied Minors*. JUST SECURITY, 13 April 2020. <https://www.iustsecurity.org/69640/coronavirus-border-expulsions-cdcs-assault-on-asylum-seekers-and-unaccompanied-minors/>; Harold Koh, *Re: Ending Title 42 return flights to countries of origin, particularly Haiti*. Memorandum, 2 October 2021. <https://www.politico.com/f/?id=0000017c-4c4a-dddc-a77e-4ddbf3ae0000>.
- <sup>32</sup> On August 8, 2022, the U.S. Department of Homeland Security announced the end of the Trump-era "Remain in Mexico" policy. U.S. Dep't of Homeland Security, *DHS Statement on U.S. District Court's Decision Regarding MPP*. 8 August 2022. <https://www.dhs.gov/news/2022/08/08/dhs-statement-us-district-courts-decision-regarding-mpp>. The announcement came after a federal district court, following a Supreme Court ruling in June 2022, lifted an injunction that had blocked the Biden administration's termination of the policy and had compelled its reimplemention. *Biden v. Texas*, No. 21-954 (U.S. Supreme Ct., 30 June 2022). [https://www.supremecourt.gov/opinions/21pdf/21-954\\_7148.pdf](https://www.supremecourt.gov/opinions/21pdf/21-954_7148.pdf).
- <sup>33</sup> Kirstjen M. Nielsen, *Policy Guidance for Implementation of the Migrant Protection Protocols*. U.S. Dep't of Homeland Security, 25 January 2019. [https://www.dhs.gov/sites/default/files/publications/19\\_0129\\_OPA\\_migrant-protection-protocols-policy-guidance.pdf](https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf).
- <sup>34</sup> By 2018, the U.S. Department of Homeland Security had expanded the metering policy along the entire U.S.-Mexico border. In August 2022, a U.S. federal judge permanently enjoined the metering policy, finding it violates U.S. law. See Human Rights First, *Refugee Blockade: The Trump Administration's Obstruction of Asylum Claims at the Border*. 11 December 2018. <https://humanrightsfirst.org/library/refugee-blockade-the-trump-administrations-obstruction-of-asylum-claims-at-the-border/>. *Al Otro Lado v. Mayorkas*. No. 17-cv-02366 (S.D. CA, Aug. 5, 2022). [https://www.americanimmigrationcouncil.org/sites/default/files/litigation\\_documents/challenging\\_custom\\_and\\_border\\_protections\\_unlawful\\_practice\\_of\\_turning\\_away\\_asylum\\_seekers\\_converting\\_pi\\_to\\_permanent\\_injunction.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/challenging_custom_and_border_protections_unlawful_practice_of_turning_away_asylum_seekers_converting_pi_to_permanent_injunction.pdf).
- <sup>35</sup> Human Rights First, *Al Otro Lado, and Haitian Bridge Alliance, Extending Title 42 Would Escalate Dangers, Exacerbate Disorder, and Magnify Discrimination*. Human Rights First, April 2022. <https://humanrightsfirst.org/library/extending-title-42-would-escalate-dangers-exacerbate-disorder-and-magnify-discrimination/>.
- <sup>36</sup> See, e.g., Miriam Miranda, *Afro-Indigenous People in Honduras Are Being Forcibly Displaced. Washington Is Complicit*. IN THESE TIMES, 11 October 2021. <https://inthesetimes.com/article/garifuna-honduras-indigenous-peoples-day-human-rights-corruption>; María Rubio, *In Honduras, climate change is one more factor sparking displacement*. UNHCR, 9 November 2021. <https://www.unhcr.org/en-us/news/stories/2021/11/61844eef4/honduras-climate-change-factor-sparking-displacement.html>.
- <sup>37</sup> See, *Task Force Report to the President on the Climate Crisis and Global Migration A Pathway to Protection for People on the Move*. 14 July 2021. [https://www.refugeesinternational.org/reports/2021/7/12/task-force-report-to-the-president-on-the-climate-crisis-and-global-migration-a-pathway-to-protection-for-people-on-the-move#\\_ftn4](https://www.refugeesinternational.org/reports/2021/7/12/task-force-report-to-the-president-on-the-climate-crisis-and-global-migration-a-pathway-to-protection-for-people-on-the-move#_ftn4).
- <sup>38</sup> *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on ecological crisis climate justice and racial justice*. A/77/2990. p.13.
- <sup>39</sup> See, e.g., Julia Neusner and Kennji Kizuka, *The Nightmare Continues: Title 42 Court Order Prolongs Human Rights Abuses, Extends Disorder at U.S. Borders*, at 12. Human Rights First, 16 June 2022. <https://humanrightsfirst.org/library/the-nightmare-continues-title-42-court-order-prolongs-human-rights-abuses-extends-disorder-at-u-s-borders/>; Human Rights First, *Barred at the Border: Wait "Lists" Leave Asylum Seekers in Peril at Texas Ports of Entry*. April 2019. <https://humanrightsfirst.org/library/barred-at-the-border-wait-lists-leave-asylum-seekers-in-peril-at-texas-ports-of-entry/>.
- <sup>40</sup> See, e.g., *The Nightmare Continues: Title 42 Court Order Prolongs Human Rights Abuses, Extends Disorder at U.S. Borders*.
- <sup>41</sup> U.S. Dep't of Homeland Security, Office of Inspector General, *Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy*. 27 September 2018. <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>; U.S. Dep't of Homeland Security, Office of Inspector General, *CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry*, 27 October 2020, <https://www.oig.dhs.gov/sites/default/files/assets/2020-10/OIG-21-02-Oct20.pdf>.
- <sup>42</sup> Shane Campbell-Station, Reena Walker, Savannah Rogers, Jason de Leon, *Physiological costs of undocumented human migration across the southern United States border*. SCIENCE, 16 Dec. 2021. <https://www.science.org/doi/10.1126/science.abh1924>.
- <sup>43</sup> Camilo Montoya-Galvez. *At least 853 migrants died crossing the U.S.-Mexico border in past 12 months — a record high*. CBS NEWS. 28 October 2022. <https://www.cbsnews.com/news/migrant-deaths-crossing-us-mexico-border-2022-record-high/>.

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<sup>44</sup> COP27: *Urgent need to respect human rights in all climate change action, say UN experts.*

<sup>45</sup> UNHCR, *Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters*. 1 October 2020. <https://www.refworld.org/docid/5f75f2734.html>.

<sup>46</sup> UNHCR has repeatedly urged the United States to “swiftly lift the Title 42 public health-related asylum restrictions that remain in effect and to restore access to asylum for people whose lives depend on it.” U.N. High Commissioner for Refugees, *UNHCR concerned over U.S. expulsion flights under COVID-19 asylum restrictions*. 11 August 2021. <https://www.unhcr.org/en-us/news/press/2021/8/6113dfc14/unhcr-concerned-expulsion-flights-under-covid-19-asylum-restrictions.html>; UNHCR, *Statement attributable to UN High Commissioner for Refugees Filippo Grandi on the need to end US COVID-19 asylum restrictions*. 20 May 2021. <https://www.unhcr.org/news/press/2021/5/60a687764/statement-attributable-un-high-commissioner-refugees-filippo-grandi-need.html>. UNHCR has warned that “[t]he summary, mass expulsions of individuals currently under way under the Title 42 authority, without screening for protection needs, is inconsistent with international norms and may constitute refoulement.” UNHCR, *News Comment by UN High Commissioner for Refugees Filippo Grandi on conditions and expulsions at US border*. 21 September 2021. <https://www.unhcr.org/en-us/news/press/2021/9/614a27324/news-comment-un-high-commissioner-refugees-filippo-grandi-conditions-expulsions.html>.

<sup>47</sup> Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa*. 10 September 1969, 1001 U.N.T.S. 45. [https://au.int/sites/default/files/treaties/36400-treaty-36400-treaty-oau\\_convention\\_1963.pdf](https://au.int/sites/default/files/treaties/36400-treaty-36400-treaty-oau_convention_1963.pdf). Forty-six African Union member states have ratified the Convention. *Cartagena Declaration on Refugees*, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias, Colombia. 22 November 1984. [https://www.oas.org/dil/1984\\_cartagena\\_declaration\\_on\\_refugees.pdf](https://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf). Belize, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Venezuela have adopted the Cartagena Declaration. UNHCR has clarified, “while States may choose to apply the Cartagena refugee definition to persons compelled to leave because of natural or ecological disasters, they are not strictly speaking protected pursuant to the Cartagena refugee definition.” UNHCR, *Summary Conclusions on the interpretation of the extended refugee definition in the 1984 Cartagena Declaration*. 7 July 2014. <https://www.unhcr.org/protection/expert/53bd4d0c9/summary-conclusions-interpretation-extended-refugee-definition-1984-cartagena.html>.

<sup>48</sup> *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*. p.10.

<sup>49</sup> The White House. *Report on the Impact of Climate Change on Migration*. October 2021. <https://www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf>.

<sup>50</sup> The Refugees International Task Force, consisting of representatives from Refugees International, the International Refugee Assistance Project, HIAS, Church World Service, and others, recommends “a form of complementary protection in the United States for forced migrants who do not meet the refugee definition under the Immigration and Nationality Act (INA), but who are unable to return safely to their countries of origin due to a variety of dire threats, including those due to disaster resulting from the effects of climate change.” *Task Force Report to the President on the Climate Crisis and Global Migration A Pathway to Protection for People on the Move*; Amnesty International has noted that “[t]he climate crisis also triggers rights and responsibility-sharing around the protection of individuals affected by climate displacement, including the right to seek asylum and the availability of alternative pathways, and the obligation to uphold the principle of non-refoulement.” *Amnesty International, Amnesty International USA Policy Recommendations on Climate Displacement*, 28 May 2021.

<https://www.amnestyusa.org/our-work/government-relations/advocacy/amnesty-climate-displacement-recommendations-may-2021/>; Human Rights Watch has recommended a complementary protection standard for the United States that applies to “people who would face . . . serious threats to life or physical integrity if returned to their countries because of a real risk of violence or exceptional situations.” Bill Frelick, *How to Make the US Asylum System Efficient and Fair*. Human Rights Watch, 21 May 2021. <https://www.hrw.org/news/2021/05/21/how-make-us-asylum-system-efficient-and-fair>.

<sup>51</sup> For example, withholding of removal, the mandatory non-refoulement protection required under the U.N. Convention Against Torture and U.S. immigration law, would provide more limited relief than asylum and lacks a path to legal permanent residence or citizenship. See Human Rights First, *Withholding of Removal and the U.N. Convention Against Torture—No Substitute for Asylum, Putting Refugees at Risk*. 9 November 2018. <https://humanrightsfirst.org/library/withholding-of-removal-and-the-u-n-convention-against-torture-no-substitute-for-asylum-putting-refugees-at-risk/>.

<sup>52</sup> *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*. p.11.

<sup>53</sup> COP27: *Urgent need to respect human rights in all climate change action, say UN experts.*

<sup>54</sup> UNHCR, IOM and UNICEF, *UNHCR, IOM and UNICEF welcome new pathways for regular entry to the US, reiterate concern over restrictions on access to asylum*. 14 October 2022. <https://www.unhcr.org/en-us/news/press/2022/10/63497be44/unhcr-iom-and-unicef-welcome-new-pathways-for-regular-entry-to-the-us-reiterate.html>

<sup>55</sup> See, e.g., *Letter: Leaders of Refugee, Policy Organizations Call on Biden Administration to Prioritize Climate Impacted Populations for Resettlement*. 8 September 2022. <https://www.refugeesinternational.org/reports/2022/9/8/letter-leaders-of-refugee-policy-organizations-call-on-biden-administration-to-prioritize-climate-impacted-populations-for-resettlement>.

<sup>56</sup> *Memorandum on Presidential Determination on Refugee Admissions for Fiscal Year 2023*. No. 2022-25. 27 September 2022. <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/09/27/memorandum-on-presidential-determination-on-refugee-admissions-for-fiscal-year-2023/>; U.S. Dep’t of State, *Report to Congress on Proposed Refugee Admissions for Fiscal Year 2023*. 8 September 2022. <https://www.state.gov/report-to-congress-on-proposed-refugee-admissions-for-fiscal-year-2023/>.

<sup>57</sup> *Report of the Special Rapporteur on the human rights of migrants*. A/77/189. p.22.