

Congress of the United States
Washington, DC 20515

November 1, 2021

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

The Honorable Ur Jaddou
Director
U.S. Citizenship and Immigration Services
111 Massachusetts Avenue, NW
Washington, DC 20001

Dear President Biden, Secretary Mayorkas, and Director Jaddou:

Climate change is creating a widespread humanitarian crisis, as weather-related disasters, drought, famine, and rising sea levels are forcing tens of millions of people around the globe from their homes each year.¹ We write to urge the Biden administration to respond to the plight of these climate-displaced persons, who are falling through the cracks of an outdated immigration system that does not recognize them. Until Congress can enact specific statutory protections for climate-displaced persons, the Administration can and should expansively use existing authorities to help those suffering at the hand of our changing climate.

Climate change quickens the frequency and severity of extreme weather events, resulting in displacement disasters such as flooding, mudslides, desertification, increased salinization, rising sea levels, and higher average temperatures. In already fragile and conflict-affected settings, climate change also acts as a “threat multiplier,” aggravating underlying tensions while increasing political, social, and economic insecurity. As a consequence, we are witnessing an explosion in the numbers of those fleeing their homes and crossing borders in search of safe and healthy environments.

The current state of the law makes responding to this crisis difficult. The United States addresses climate-displaced persons only on an ad-hoc basis through existing executive authority in the U.S. Immigration and Nationality Act (INA). Additionally, the federal agencies responsible for implementation of the INA—chiefly the Department of Homeland Security (DHS) and its offices and enforcement arms, U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP)—have no set

¹ United Nations High Commissioner for Refugees, *Frequently asked questions on climate change and disaster displacement* (Nov. 6, 2016), <https://www.unhcr.org/en-us/news/latest/2016/11/581f52dc4/frequently-asked-questions-climate-change-disaster-displacement.html>.

guidance on how to process climate-displaced individuals. International law is also of limited assistance. Ambiguity abounds in the 1951 Geneva Convention Relating to the Status of Refugees, and no universally accepted definition of a climate-displaced person even exists.

As a nation of refuge, we cannot allow these legal shortcomings to unnecessarily inhibit our response to this humanitarian crisis. Although current immigration law does not explicitly provide protections for individuals on the basis of climate conditions, Congress legislated with sufficient flexibility to allow the government to respond to human displacement caused by climate change.² Specifically, existing legal authorities such as the special humanitarian concern provisions of our refugee laws,³ Temporary Protected Status (TPS), and Deferred Enforced Departure (DED) can help climate-displaced persons.

While we commend the Administration for its recent efforts in addressing climate change and displacement—including the implementation of a National Security Council interagency working group on climate migration⁴—we seek administrative action to enable the robust use of the following existing tools:

1. **Special Humanitarian Concern provisions.** The president should direct DHS to develop and implement administrative procedures consistent with Section 207(a)(3) of the INA, which allows the president to deem certain populations as groups of special humanitarian concern. This would pertain only to those who both suffer from negative impacts of climate change and already meet statutory requirements for refugees. In particular, USCIS and the Department of Justice’s Executive Office for Immigration Review (EOIR) should issue memoranda that guide immigration officers and judges in assessing the possible relationship between climate change and each of the five statutorily protected characteristics: race, religion, nationality, membership in a particular social group, and political opinion. These memoranda should be informed by the United Nations High Commissioner for Refugees’ (UNHCR) guidance regarding “claims for international protection made in the context of the adverse effects of climate change and disasters.”⁵
2. **TPS/DED.** TPS allows recipients who are temporarily unable to safely return to their home country because of ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions to remain in the United States. In recent years, TPS has been extended to those fleeing the 2015 earthquake in Nepal, the 2010 earthquake in Haiti, the 2001 earthquake in El Salvador, and a 1998 hurricane in Honduras and Nicaragua.⁶ Under DED, individuals from designated countries and regions facing natural disaster are not subject to removal from the United States for a

² Amali Tower, *Climate Change, Forced Displacement, Peace & Security: Biden Administration Actions that Ensure Rights*, Climate Refugees (Mar. 15, 2021), <https://www.climate-refugees.org/reports/policybrief-to-biden-eo>.

³ See 8 U.S.C § 1157.

⁴ The White House, *Fact Sheet: Prioritizing Climate in Foreign Policy and National Security* (Oct. 21, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/21/fact-sheet-prioritizing-climate-in-foreign-policy-and-national-security/>.

⁵ UN High Commissioner for Refugees, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters* (Oct. 1, 2020), available at <https://www.refworld.org/docid/5f75f2734.html>.

⁶ Erol Yayboke and Janina Staguhn, *A New Framework for U.S. Leadership on Climate Migration*, CSIS Briefs (Oct. 23, 2020), <https://www.csis.org/analysis/new-framework-us-leadership-climate-migration>.

designated period of time.⁷ The Administration should task the State Department's Office of the Special Envoy for Climate to commission a report on countries affected by the slow-onset effects of climate change, such as sea-level rise, salinization, glacial melt, and desertification. These disasters may qualify for TPS or DED, but have not traditionally been covered in the past. Additionally, the report should also assess the viability of return for current TPS and DED holders given climate change impacts.

Action on these requests is well within the Administration's existing legal authority. We have a responsibility to mend the humanitarian holes in our immigration system. We can begin by bridging the gap for climate-displaced persons, who need immediate protection, while Congress works on comprehensive, long-term solutions.

Thank you for your attention to this important matter.

Sincerely,



Edward J. Markey
United States Senator

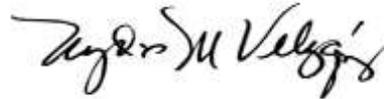


Cory A. Booker
United States Senator

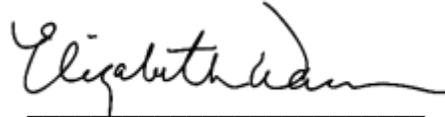


Bernard Sanders
United States Senator

/s/
Richard Blumenthal
United States Senator



Nydia M. Velázquez
Member of Congress



Elizabeth Warren
United States Senator



Alex Padilla
United States Senator

/s/
Alexandria Ocasio-Cortez
Member of Congress

⁷ USCIS, *Temporary Protected Status and Deferred Enforced Departure*, <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/temporary-protected-status-and-deferred-enforced-departure>.

_____/s/_____
Eleanor Holmes Norton
Member of Congress

_____/s/_____
Raúl Grijalva
Member of Congress

_____/s/_____
Rashida Tlaib
Member of Congress

_____/s/_____
Veronica Escobar
Member of Congress

_____/s/_____
Ann Kirkpatrick
Member of Congress

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Joaquin Castro
Member of Congress

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Jim McGovern
Member of Congress

_____/s/_____
Emanuel Cleaver
Member of Congress

_____/s/_____
Grace Meng
Member of Congress

_____/s/_____
Jesús G “Chuy” García
Member of Congress

_____/s/_____
Marilyn Strickland
Member of Congress