

12-1-2022

## WEATHERING THE STORM: ESTABLISHING INTERNALLY DISPLACED PEOPLE'S RIGHT TO AFFORDABLE HOUSING IN THE WAKE OF NATURAL DISASTERS

Raina Hasan

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/jlp>



Part of the [Environmental Law Commons](#), [Human Rights Law Commons](#), [International Humanitarian Law Commons](#), and the [Legislation Commons](#)

---

### Recommended Citation

Raina Hasan, *WEATHERING THE STORM: ESTABLISHING INTERNALLY DISPLACED PEOPLE'S RIGHT TO AFFORDABLE HOUSING IN THE WAKE OF NATURAL DISASTERS*, 31 J. L. & Pol'y 177 ().

Available at: <https://brooklynworks.brooklaw.edu/jlp/vol31/iss1/5>

This Note is brought to you for free and open access by the Law Journals at BrooklynWorks. It has been accepted for inclusion in Journal of Law and Policy by an authorized editor of BrooklynWorks.

## **WEATHERING THE STORM: ESTABLISHING INTERNALLY DISPLACED PEOPLE'S RIGHT TO AFFORDABLE HOUSING IN THE WAKE OF NATURAL DISASTERS**

*Raina Hasan* \*

For the rest of the country, [Hurricane] Ida is a warning. As natural disasters grow more severe and more frequent, they will destroy more property, turning life in the U.S. into a massive game of migratory musical chairs. It will cleave populations along the lines of class and race. The story will be the same in burning California, flash-flooded New York, and drought-ravaged Arizona as it was in Louisiana: When the storm passes and the skies clear, many people will not be able to stay. Where can they go next?<sup>1</sup>

*In 2020, natural disasters caused more internal displacement than war; floods, storms, and wildfires caused 30 million new*

---

\* J.D. Candidate, Brooklyn Law School, 2023. B.A., Boston University, 2018. I would like to thank my parents, Dr. Farzana Khaleque and Dr. Mohammad Nazmul Hasan, for supporting me in pursuing my legal education. Thank you to my sister, Fareesa, for always reminding me to stop writing in run-ons. Thank you to my friends Sophie and Julia for motivating me to keep writing and feeding me on those stressful nights I left everything to the last second. Thank you to the JLP executive board and staff for giving me thoughtful feedback. Lastly, my Note is largely inspired by the resilience of Bangladeshi people who have been on the forefront of the global climate crisis and whose innovation has pushed me to think more creatively about how we might navigate the uncertain waters we find ourselves in.

<sup>1</sup> Jake Bittle, *Climate Change is Already Rejiggering Where Americans Live*, ATL. (Sept. 3, 2021), <https://www.theatlantic.com/science/archive/2021/09/hurricane-ida-louisiana-climate-migration/619971/> [https://perma.cc/R79L-ZJ2F].

*displacements globally, and 1.7 million in the U.S. alone. The data and history suggest that masses of people will be displaced every year and will face housing insecurity without any formal acknowledgement of their unique plight or a guarantee that internally displaced persons (“IDPs”) will have protected rights. This Note proposes that, considering the worsening climate crisis leading to more frequent and severe natural disasters, the U.S. should codify the rights of internally displaced people as laid out in the United Nations’ Guiding Principles on Internal Displacement. In order to actualize IDPs’ right to return and resettle, the U.S. should also establish IDPs’ right to affordable housing when natural disasters force people to leave behind their homes and communities. To effectively enforce such rights, the federal government should provide more affordable housing, invest in making the existing affordable housing stock and new affordable housing developments climate resilient, and collect accurate data on IDPs to provide adequate disaster relief, taking special care not to exacerbate gentrification and surveillance concerns. Codifying the rights of IDPs would go a long way in remedying larger systemic issues such as the racial wealth gap and rampant housing insecurity, ultimately furthering environmental justice.*

## INTRODUCTION

Natural disasters with devastating impacts are on the rise as climate change exacerbates extreme weather.<sup>2</sup> Climate change—or rather, the climate crisis—is projected to make some localities uninhabitable for humans in a matter of decades.<sup>3</sup> “Across the United States . . . 162 million people,” half the U.S. population, will “likely experience a decline in the quality of their environment,”

---

<sup>2</sup> Danielle Baussan, *When You Can’t Go Home: The Gulf Coast 10 Years After Katrina*, CTR. FOR AM. PROGRESS (Aug. 18, 2015), <https://www.americanprogress.org/issues/green/reports/2015/08/18/119511/when-you-cant-go-home/> [https://perma.cc/F6XW-3N3L].

<sup>3</sup> See Abrahm Lustgarten, *The Great Climate Migration*, N.Y. TIMES (Jul. 23, 2020), <https://www.nytimes.com/interactive/2020/07/23/magazine/climate-migration.html> [https://perma.cc/2AV6-T7K8].

manifesting mostly as hotter climates and decreased water supply.<sup>4</sup> According to the Intergovernmental Panel on Climate Change (“IPCC”),<sup>5</sup> unless there are immediate and large scale reductions in greenhouse gas emissions, catastrophic weather patterns and climate events will continue to befall our homes.<sup>6</sup> If global temperatures increase by more than 1.5 degrees Celsius or 2.7 degrees Fahrenheit, life as we know it will change drastically.<sup>7</sup> Furthermore, the New York Times and ProPublica project that by 2070, “28 million people across [the U.S.] could face Manhattan-size megafires.”<sup>8</sup> By 2060, the Midwest will experience humidity so severe that outdoor labor will become dangerous.<sup>9</sup> Rising sea levels will cause eight of the U.S.’s twenty largest metropolitan areas, including Miami, New York and Boston, to be “profoundly altered,” affecting 50 million people.<sup>10</sup> It is also projected that “13 million Americans will be forced to move away from submerged coastlines” by 2060; the

---

<sup>4</sup> Abrahm Lustgarten, *How Climate Migration Will Reshape America: Millions Will Be Displaced. Where Will They Go?*, N.Y. TIMES (Sept. 15, 2020), <https://www.nytimes.com/interactive/2020/09/15/magazine/climate-crisis-migration-america.html> [<https://perma.cc/9TQK-T767>].

<sup>5</sup> *About the IPCC*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, <https://www.ipcc.ch/about/> [<https://perma.cc/6SCA-U7MJ>] (last visited Nov. 28, 2022) (“The IPCC is the United Nations body that assess[es] . . . science related to climate change . . . to provide governments at all levels with scientific information . . . to develop climate policies.”).

<sup>6</sup> See *Climate Change Widespread, Rapid and Intensifying – IPCC*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (Aug. 9, 2021), <https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/> [<https://perma.cc/M88W-5GAE>].

<sup>7</sup> See Lauren Sommer, *This Is What the World Will Look Like If We Pass the Crucial 1.5-Degrees Climate Threshold*, NPR (Nov. 8, 2021, 5:15 AM), <https://www.npr.org/2021/11/08/1052198840/1-5-degrees-warming-climate-change> [<https://perma.cc/D6ZQ-TH56>] (explaining the changes that will occur should global temperatures rise above 1.5 degrees Celsius by 2100, including the coral reefs completely dying off, extreme storms becoming more common, and melting ice flooding coastal cities).

<sup>8</sup> Lustgarten, *supra* note 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*



ripple effects of a mass forced migration of that size will fundamentally change American society.<sup>11</sup>

While such looming statistical projections may be difficult to fathom now, the recent Hurricane Ida serves as a harsh reminder of the very real human suffering already occurring as a result of increasingly severe and frequent weather events and the disproportionate harm faced by marginalized communities.<sup>12</sup> Many New York City residents with lower earnings—largely immigrants—have been forced to live in illegal basement apartments because they were priced out of safe, quality housing.<sup>13</sup> In a cruel twist of fate, these residents paid the ultimate price for seeking cheaper housing.<sup>14</sup> When Hurricane Ida hit an unsuspecting New York City in early September of 2021, eleven of the thirteen people killed were working class immigrants found in basement apartments, many of which “were never legally converted into residential spaces.”<sup>15</sup> Hurricane Ida also destroyed thousands of homes in parts of Louisiana.<sup>16</sup> In Terrebonne Parish, “the worst-

---

<sup>11</sup> *Id.* (“The Great Migration—of [6] million Black Americans out of the South from 1916 to 1970—transformed almost everything we know about America, from the fate of its labor movement to the shape of its cities to the sounds of its music. What would it look like when twice that many people moved?”).

<sup>12</sup> See Rashad Robinson, *Hurricane Ida’s Destruction Was the Result of Years of Systemic Racism*, SALON (Oct. 5, 2021), <https://www.salon.com/2021/10/05/do-black-lives-matter-hurricane-idas-destruction-was-the-direct-result-of-systemic/> [https://perma.cc/6LH3-338N].

<sup>13</sup> See Stephanie Lai et al., *Life and Death Underground: N.Y. Immigrants Perish in Flooded Basements*, THE WASH. POST (Sept. 4, 2021, 5:20 PM) [https://www.washingtonpost.com/politics/hurricane-ida-new-york-floods/2021/09/04/b661e9da-0ce7-11ec-a6dd-296ba7fb2dce\\_story.html](https://www.washingtonpost.com/politics/hurricane-ida-new-york-floods/2021/09/04/b661e9da-0ce7-11ec-a6dd-296ba7fb2dce_story.html) [https://perma.cc/579X-U3V3].

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* (“Most of the dead were immigrants; they’d come to New York from Trinidad, Nepal and China. They were busboys and kitchen helpers and 7-eleven clerks, and in a city where apartments rent for far more than many immigrants’ first jobs pay, the only housing they’d been able to find was below ground.”).

<sup>16</sup> See Madeline Holcombe et al., *About 14,000 People Displaced When Ida Battered One Louisiana Parish, Official Says*, CNN (Sept. 6, 2021, 6:36 PM), <https://www.cnn.com/2021/09/06/weather/hurricane-ida-recovery-monday/index.html> [https://perma.cc/8NAB-GQAX] (“About 14,000 people in one Louisiana parish are without homes after Hurricane Ida damaged or destroyed

damaged properties were the prefab trailers that house many low-income residents . . . .”<sup>17</sup>

Often, the first people able to migrate in the wake of destructive natural disasters are the young and the wealthy, leaving behind the poor and the elderly, many of whom do not have the necessary resources to move away.<sup>18</sup> This was the case in the aftermath of Hurricane Ida in Louisiana, where many elderly people stayed behind with the burden of rebuilding,<sup>19</sup> while the “tens of thousands of residents who evacuated . . . [have] not yet returned to [their] homes . . . .”<sup>20</sup> Similarly, race is a significant factor in determining who is most vulnerable to climate change and the resulting housing insecurity.<sup>21</sup> Exclusionary housing policies like segregation and redlining have had lasting impacts,<sup>22</sup> making poor communities of color particularly vulnerable to housing insecurity following a natural disaster.<sup>23</sup> As of today, “74% of the neighborhoods redlined [eighty] years ago are still low-to-moderate income, and 64% of

---

75% of the structures there, Lafourche Parish President Archie Chaisson said Monday.”).

<sup>17</sup> Bittle, *supra* note 1.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* (explaining that a seventy-two-year-old man, whose house was severely damaged by Hurricane Ida, did not move away after the storm in part because he did not believe he could afford to live somewhere else, stating “I got this house for \$100,000, but if I went to Houma, to the city, it might cost three times that . . . At my age, I don’t know if I could start over again.”).

<sup>20</sup> *Id.*

<sup>21</sup> See Taylor Gauthier & Fin. Sec. Program, *The Devastating Effects of Climate Change on US Housing Security*, ASPEN INST. (Apr. 9, 2021), <https://www.aspeninstitute.org/blog-posts/the-devastating-effects-of-climate-change-on-us-housing-security/> [<https://perma.cc/43KQ-F5DY>] (“Past and current discriminatory housing policies contribute to increased risk for households of color and threaten their ability to respond to climate change disasters.”).

<sup>22</sup> See David F. Damore et al., *The New Politics of Bluelining*, BROOKINGS INST. (Oct. 7, 2020), <https://www.brookings.edu/blog/fixgov/2020/10/07/the-new-politics-of-bluelining/> [<https://perma.cc/27XR-JHQ7>] (explaining that the term redlining “originates from Federal Housing Administration maps developed in the 1930s where ‘red’ labeled high-risk lending zones. To be ‘redlined’ meant that households were structurally denied home loans and lost the opportunity to build wealth.”).

<sup>23</sup> See Gauthier & Fin. Sec. Program, *supra* note 21.

these neighborhoods are primarily occupied by people of color.”<sup>24</sup> Such communities are “more likely to . . . have failing infrastructure and receive less public and private investment,” consequently increasing their risk of incomplete or prolonged recovery after natural disasters.<sup>25</sup> “Households of color are more likely to live in a floodplain,” as redlining practices pushed communities of color into “undesirable and often low-lying neighborhoods,” that have substandard sewage and drainage systems due to insufficient public investment.<sup>26</sup> Similarly, a 2018 study conducted by the University of Washington and the Nature Conservancy found that wildfires disproportionately harm communities of color due to various socioeconomic factors like income, housing type, and language fluency, making it difficult for such communities to adapt or recover.<sup>27</sup> Moreover, “mostly Black, Hispanic or Native American communities experience 50% greater vulnerability to wildfires compared with primarily white communities . . . .”<sup>28</sup> “Native Americans [specifically] are six times more likely than others to live in areas most prone to wildfires . . . [due to] historical forced relocation”<sup>29</sup> to rural, remote areas.<sup>30</sup>

Previously redlined neighborhoods often overlap with the new practice of “blue-lining,” which involves banks or mortgage lenders drawing boundaries around neighborhoods with increased environmental risk.<sup>31</sup> Like redlining, blue-lining is used by banks

---

<sup>24</sup> *Turning the Tide: Opportunities to Build Social Equity Through Federal Flood Disaster Policy*, AM. FLOOD COAL. 4 (May 2020), <https://assets.floodcoalition.org/2020/08/e77e13287e90914325f82c7063666448-American-Flood-Coalition-Turning-the-Tide-Toward-Equity-8.3.2020.pdf> [<https://perma.cc/YJF3-Z2XW>].

<sup>25</sup> *Id.*

<sup>26</sup> Gauthier & Fin. Sec. Program, *supra* note 21.

<sup>27</sup> *Wildfires Impact Minorities*, NATURE CONSERVANCY, <https://www.nature.org/en-us/about-us/where-we-work/united-states/washington/stories-in-washington/wildfires-impact-minorities/> [<https://perma.cc/HDE9-RQ5E>]. (last visited Nov. 28, 2022).

<sup>28</sup> Kandace Redd, *How Wildfires Disproportionately Affect People of Color*, URBAN@UW (Sept. 2, 2021), <https://urban.uw.edu/news/how-wildfires-disproportionately-affect-people-of-color/> [<https://perma.cc/2XZD-R4DR>].

<sup>29</sup> *Id.*

<sup>30</sup> NATURE CONSERVANCY, *supra* note 27.

<sup>31</sup> Gauthier & Fin. Sec. Program, *supra* note 21.

and mortgage lenders to make loan and mortgage decisions.<sup>32</sup> Consequently, blue-lined neighborhoods receive less investment for flood or fire prevention, as they have been deemed to have heightened environmental risk.<sup>33</sup> Accordingly, property values in these blue-lined neighborhoods tend to be less than those in the surrounding areas, making it more difficult for homeowners in blue-lined neighborhoods to get insurance that covers natural disasters.<sup>34</sup> For example, in California, insurers have been pulling out of neighborhoods near the forest line and on the edge of cities prone to wildfires, increasing the risk that homeowners in those areas will lose their homes and will be unable to rebuild, as many cannot afford the higher premiums charged by insurers to compensate for the losses caused by potential wildfires.<sup>35</sup> This issue is only compounded by the fact that affordable housing was historically built in fire prone areas because “the land [was simply] cheaper there.”<sup>36</sup> If insurers virtually abandon fire prone areas, banks will be less willing to approve mortgages in those areas, making it harder to buy and sell homes in those areas.<sup>37</sup> Blue-lining compounds the discriminatory effects of redlining to the detriment of renters and homeowners of color, putting them at greater risk of displacement in the aftermath of a natural disaster.<sup>38</sup> Longstanding discriminatory

---

<sup>32</sup> See Lindsey Jacobson, *Banks Consider Climate Risk for Home Loans, a Process Called ‘Underwaterwriting’ Or ‘Blue-lining,’* CNBC (Sept. 23, 2021), <https://www.cnbc.com/2021/09/20/blue-lining-and-underwaterwriting-banks-consider-climate-change-risk.html#:~:text=Blue%2Dlining%2C%20on%20the%20other,or%20other%20climate%2Drelated%20disasters> [<https://perma.cc/QN9N-N66A>] (“[Blue-lining] is meant to be reminiscent of redlining, a product of institutionalized racism that restricted loan availability to homeowners in minority-dominated neighborhoods. Some climate advocates feel that blue-lining is creating a new class of victims who have their climate risk determined by banks with little transparency.”).

<sup>33</sup> Gauthier & Fin. Sec. Program, *supra* note 21.

<sup>34</sup> *Id.*

<sup>35</sup> Christopher Flavelle, *Wildfires Hasten Another Climate Crisis: Homeowners Who Can’t Get Insurance*, N.Y. TIMES (Sept. 10, 2020), <https://www.nytimes.com/2020/09/02/climate/wildfires-insurance.html> [<https://perma.cc/7TSG-CBER>].

<sup>36</sup> *Id.*

<sup>37</sup> *See id.*

<sup>38</sup> *See* Gauthier & Fin. Sec. Program, *supra* note 21.

housing policies ensure that climate change does not<sup>39</sup> and will not affect everyone in the same way,<sup>40</sup> particularly historically excluded groups.<sup>41</sup>

People forced to leave their homes and relocate somewhere else within the country because of the worsening climate and natural disasters should be considered, as recognized by the international community, internally displaced persons (“IDPs”). The United Nations (“UN”) defines IDPs as

persons or groups of persons who have been forced or obliged to flee or to leave their homes or place of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border.<sup>42</sup>

---

<sup>39</sup> See Matt McGrath, *Global Heating: Study Shows Impact of ‘Climate Racism’ In US*, BBC NEWS (May 25, 2021), <https://www.bbc.com/news/science-environment-57235904> [<https://perma.cc/9ZAS-PZ3Y>] (discussing research that demonstrated people of color, particularly Black people, living in most U.S. cities are subject to greater heat stress than their white counterparts, and that the discrepancy can be explained more by historic racism and segregation rather than poverty).

<sup>40</sup> However, the effects of climate change will affect everyone in some way. See Lustgarten, *supra* note 4 (discussing how due to rising sea level in the Bay Area “Latino, Asian and Black communities who live in the most-vulnerable low-lying districts will be displaced first,” but a 2017 study suggests that displacement will eventually be far more widespread with roughly 700,000 people abandoning the Bay Area due to sea-level rise alone).

<sup>41</sup> See *Historically Excluded Group*, DIVERSITY OFFICER MAG., <https://diversityofficermagazine.com/cultural-competence/diversitypedia/heg/> [<https://perma.cc/Y3Z3-R8C9>] (last visited Nov. 28, 2022) (“The term historically excluded group or [HEG] refers to any group of people that has been historically excluded from full rights, privileges and opportunities in a society or organization.”).

<sup>42</sup> *About internally displaced persons*, U.N. OFF. OF THE HIGH COMM’R. FOR HUM. RTS., <https://www.ohchr.org/en/issues/idpersons/pages/issues.aspx> [<https://perma.cc/BD9T-BBE2>] (last visited Nov. 28, 2022).

Unlike refugees who are entitled to certain legal protections both internationally<sup>43</sup> and in the U.S.,<sup>44</sup> IDPs are not directly protected under any IDP-specific international laws.<sup>45</sup> Rather, they are only indirectly protected under certain general international human rights and humanitarian laws.<sup>46</sup> Moreover, there are no laws with which the U.S. is bound to comply regarding the protection of IDPs.<sup>47</sup> Acknowledging this gap, in 1988, the UN restated and compiled existing international human rights and humanitarian law applicable to IDPs and clarified ambiguous legal areas in the Guiding

---

<sup>43</sup> *Id.* (“According to the 1951 Convention on the Status of Refugees, a ‘refugee’ is a person who, ‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of 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 return to it . . . A crucial requirement to be considered a ‘refugee’ is crossing an international border.”).

<sup>44</sup> *An Overview of U.S. Refugee Law and Policy*, AM. IMMIGR. COUNCIL, <https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy> [https://perma.cc/BNZ4-YVS2] (last visited Nov. 28, 2022) (discussing how the U.S. became a party to United Nations 1951 Convention in 1968, and “Congress passed the Refugee Act of 1980, which incorporated the Convention’s definition into U.S. law and provides the legal basis for today’s U.S. Refugee Admissions Program”).

<sup>45</sup> *Internally Displaced Persons*, MEDECINS SANS FRONTIERES, <https://guide-humanitarian-law.org/content/article/3/internally-displaced-persons/> [https://perma.cc/7MGH-F4KW] (last visited Nov. 28, 2022) (“IDPs do not constitute a distinct legal category and therefore do not benefit from any specific protection under international law.”).

<sup>46</sup> U.N. OFF. OF THE HIGH COMM’R. FOR HUM. RTS., *supra* note 42 (“Like all human beings, [IDPs] enjoy human rights that are articulated by international human rights instruments and customary law. In situations of armed conflict, moreover, they enjoy the same rights as other civilians to the various protections provided by international humanitarian law.”).

<sup>47</sup> See Phil Orchard, *The Role of National Legislation and Policies in Protecting Internally Displaced Persons*, SUBMISSION TO THE U.N. SEC’Y GENERAL’S HIGH-LEVEL PANEL ON INTERNAL DISPLACEMENT, [https://www.un.org/internal-displacement-panel/sites/www.un.org.internal-displacement-panel/files/published\\_phil\\_orchard\\_submission.pdf](https://www.un.org/internal-displacement-panel/sites/www.un.org.internal-displacement-panel/files/published_phil_orchard_submission.pdf) [https://perma.cc/HN3N-75HS] (last visited Nov. 28, 2022) (delineating that the U.S. is not a country that has passed a domestic law or policy directly related to internal displacement).

Principles on Internal Displacement (“Guiding Principles”).<sup>48</sup> The Guiding Principles outline to UN member states how IDPs should be protected, but do not function as binding authority on any nation.<sup>49</sup> Although “[s]everal nations have implemented the Guiding Principles into their own domestic laws,” the U.S. has failed to do so.<sup>50</sup>

In 2020, climate disasters caused more internal displacement than war; floods, storms, and wildfires caused thirty million new displacements globally.<sup>51</sup> Notably, in North and South America, climate disasters were the cause of most new displacements<sup>52</sup> with

---

<sup>48</sup> Francis M. Deng, Representative of the Secretary-General, *Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998), <https://undocs.org/E/CN.4/1998/53/Add.2> [<https://perma.cc/SD8Q-PZCT>].

<sup>49</sup> *Id.* (“These Guiding Principles address the specific needs of [IDPs] worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration . . . These Guiding Principles should be disseminated and applied as widely as possible.”); see also Roberta Cohen, *Introduction to the Guiding Principles on Internal Displacement*, BROOKINGS INST. (Sept. 23, 2001), <https://www.brookings.edu/on-the-record/introduction-to-the-guiding-principles-on-internal-displacement-2/#:~:text=Although%20not%20a%20binding%20document,were%20developed%20for%20several%20reasons> [<https://perma.cc/FC67-SCJG>] (“Although not a binding document like a treaty, the Guiding Principles are based on binding law—human rights law, humanitarian law, refugee law by analogy—and their provisions are consistent with that law.”).

<sup>50</sup> See Orchard, *supra* note 47, at 1 (“Between 1993 and 2017, forty states passed laws and policies directly related to internal displacement, the significant majority since the Guiding Principles have been adopted.”).

<sup>51</sup> Saeed Kamali Dehghan, *Climate Disasters ‘Caused More Internal Displacement Than War’ in 2020*, THE GUARDIAN (May 20, 2021), <https://www.theguardian.com/global-development/2021/may/20/climate-disasters-caused-more-internal-displacement-than-war-in-2020> [<https://perma.cc/XE7N-B6FS>].

<sup>52</sup> *Global Internal Displacement Database: 2021 Internal Displacement*, INTERNAL DISPLACEMENT MONITORING CTR., <https://www.internal-displacement.org/database/displacement-data> [<https://perma.cc/RZ9J-3Q2E>] (last visited Nov. 28, 2022) (“Internal displacement corresponds to the estimated number of internal displacement movements to have taken place during the year. Figures include individuals who have been displaced more than once. In this

4.5 million recorded, the highest figure in a decade.<sup>53</sup> Of the 4.5 million disaster-related displacements in the Americas, 1.7 million occurred in the U.S., and more than a half were the result of storms and floods.<sup>54</sup> In the U.S., devastating wildfires were responsible for generating much of the mass internal displacement in 2020.<sup>55</sup> Disasters will continue to drive displacement as the climate worsens and weather becomes increasingly severe.<sup>56</sup> Many of those evacuated, particularly the poor and the elderly, will likely not be able to afford to return to their homes or resettle in a more climate-resilient<sup>57</sup> community. The U.S. must codify the Guiding Principles to establish the legal rights of IDPs, particularly the right to return and the right to resettle.<sup>58</sup> This codification would then trigger both the federal government's affirmative duty to provide affordable housing and the IDPs' right to affordable housing, combatting the systemic inequities that condemn the most vulnerable to housing insecurity in the wake of natural disaster.

Part I of this Note examines the internal displacement following Hurricane Katrina and the lack of affordable housing available to

---

sense, the number of internal displacements does not equal the number of people displaced during the year.”).

<sup>53</sup> 2021 *Global Report on Internal Displacement*, INTERNAL DISPLACEMENT MONITORING CTR., 61 (May 2021) [https://www.internal-displacement.org/sites/default/files/publications/documents/grid2021\\_idmc.pdf](https://www.internal-displacement.org/sites/default/files/publications/documents/grid2021_idmc.pdf) [<https://perma.cc/G6ZW-7AGF>].

<sup>54</sup> *Id.* at 60–61.

<sup>55</sup> *Id.*

<sup>56</sup> See *How Climate Change Is Multiplying Risks for Displacement*, UNHCR (Dec. 2, 2020), <https://www.unhcr.org/en-us/news/stories/2020/12/5fc74f754/climate-change-multiplying-risks-displacement.html> [<https://perma.cc/EVU8-SQ5Y>] (“Climate change itself is magnifying the impact of other threats that drive displacement—worsening poverty and intensifying pressures on resources and governance in ways that can stoke conflict and violence.”).

<sup>57</sup> *Glossary*, U.S. CLIMATE RESILIENCE TOOLKIT (Mar. 2, 2021), <https://toolkit.climate.gov/content/glossary> [<https://perma.cc/98AH-CZP6>] (defining resilience as “[t]he capacity of a community, business, or natural environment to prevent, withstand, respond to, and recover from a disruption”).

<sup>58</sup> Deng, *supra* note 48 (“Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow [IDPs] to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.”).



those displaced by natural disasters. Part II discusses the shortcomings of existing federal disaster relief. Part III proposes implementing the Guiding Principles into U.S. law, which would place an affirmative duty on the federal government to provide affordable housing for IDPs, invest in making both existing and new affordable housing climate resilient, and implement a system to accurately collect data on internal displacement in the U.S. This Note does not purport to solve the broader affordable housing crisis in the U.S. Instead, it will highlight the existential and public policy imperative, given the ongoing climate crisis, for the U.S. government to implement international principles regarding IDPs and formally legalize their rights, namely the right to affordable housing. Doing so will actualize the right to return and resettle for IDPs in the interest of preserving human dignity and mitigating human suffering during a time of unprecedented change.

## I. INTERNAL DISPLACEMENT IN THE U.S.

### A. *The Numbers*

While internal displacement is often associated with countries experiencing active conflict, climate change is forcing the world to grapple with the masses of people rendered homeless by severe weather.<sup>59</sup> Similarly, many Americans misguidedly believe the effects of climate change and climate migration are foreign issues, as countries with the highest disaster driven internal displacements in 2020 were Afghanistan, India, and Pakistan.<sup>60</sup> However,

---

<sup>59</sup> Dehghan, *supra* note 51 (“Intense storms and flooding triggered three times more displacement than violent conflicts did [in 2020], as the number of people internally displaced worldwide hit the highest level on record.”).

<sup>60</sup> *Id.*; see also ‘Never Seen Climate Carnage’ Like Pakistan Floods, Says UN Chief, AL JAZEERA (Sept. 10, 2022), <https://www.aljazeera.com/news/2022/9/10/never-seen-climate-carnage-like-in-pakistan-un-chief> [<https://perma.cc/N59G-JD7Y>] (Millions of people were displaced in Pakistan due to extreme flooding that began in June of 2022 caused by rapidly melting glaciers and record monsoon rains. “Nearly 1,400 people have died and more than a million people have been rendered homeless in flooding that has submerged nearly one-third of Pakistan”).

significant changes are occurring within U.S. borders.<sup>61</sup> To highlight this point, a recent study found that approximately “half of Americans who planned to move in the next year stated natural disasters were a factor in their decision.”<sup>62</sup>

Unfortunately, it is difficult to accurately capture the scope and scale of internal displacement. For example, there is no consensus on when a person is no longer considered an IDP.<sup>63</sup> Moreover, the Guiding Principles do not contain a clause delineating when a person should no longer be considered an IDP.<sup>64</sup> Classification as an IDP should apply to people as “long as the factual situation of internal displacement continues to exist.”<sup>65</sup> If an IDP flees to another country, they would no longer be considered an IDP but would be a refugee, migrant, or national of another country, depending on other facts.<sup>66</sup> However, for a truly *internally* displaced person, the circumstance of cessation of IDP status is not as clear and remains subject to that country’s specific policies regarding IDPs that may impose arbitrary conditions to determine when internal displacement ends.<sup>67</sup> These difficulties create uncertainty when quantitatively assessing the actual number of IDPs in the U.S.

---

<sup>61</sup> Bittle, *supra* note 1 (“Many American still think of ‘climate migration’ as a global phenomenon, one that would displace the residents of low-lying Bangladesh or scalding Yemen, but even before Ida hit, distinct migration patterns were taking shape in the United States too.”).

<sup>62</sup> *Id.*

<sup>63</sup> See Erin Mooney, *When Does Internal Displacement End?*, BROOKINGS INST. (Feb. 8, 2003), <https://www.brookings.edu/on-the-record/when-does-internal-displacement-end/> [<https://perma.cc/Y8T3-44FB>] (discussing the need to develop a consensus on when IDPs should no longer be considered as such).

<sup>64</sup> *Id.* Nations can still unilaterally determine when to no longer consider someone an IDP for administrative purposes like proving entitlement to humanitarian assistance targeting IDPs. *See id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* The government of Colombia considered people internally displaced for three months, with a possible one-time three-month extension, though the Constitutional Court of Colombia determined that the termination of the legal condition of an internally displaced person in accordance with Colombian law does not necessarily correspond with the actual situation on the ground. *Id.* Additionally, the Croatian government can strip IDPs of their status that entitles them to benefits for “failure to complete household chores in the state-run communal centres where they are staying.” *Id.*

In the U.S., there are no formal methods for keeping track of IDPs in particular, rendering IDP calculations imprecise.<sup>68</sup> Current statistics are most likely underestimates given the lack of information about the number of people who were forced to flee or were able to return.<sup>69</sup> Additionally, numbers on displacement only represent a portion of the population forced to flee from extreme, sudden weather events, often excluding communities that are displaced gradually in response to climate changes such as persistent drought or flooding.<sup>70</sup> Additionally, because people who must evacuate their homes often utilize their “personal networks of friends and family to find temporary shelter,” many instances of displacement may go unreported.<sup>71</sup> These discrepancies are made worse without a standard government reporting system tracking people displaced by climate change.<sup>72</sup>

In 2020, the Internal Displacement Monitoring Centre (“IDMC”), an international non-governmental organization,<sup>73</sup> recorded 1,714,000 “new displacements” and 126,000 IDPs in total due to natural disaster—geophysical and weather-related events—in the U.S.<sup>74</sup> The term “new displacements” refers to the number of

---

<sup>68</sup> See James Kunder, *The U.S. Government and Internally Displaced Persons: Present, but Not Accounted For*, BROOKINGS INST. (Nov. 1, 1999), [https://www.brookings.edu/wp-content/uploads/2016/06/1999\\_kunder.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/1999_kunder.pdf) [<https://perma.cc/943M-SZU2>] (“The absence of U.S. government participation in data gathering on internal displacement is a major shortcoming, since insufficient data on internally displaced populations is a major gap in the international response system.”).

<sup>69</sup> Danielle Baussan, *When You Can’t Go Home: The Gulf Coast 10 Years After Katrina*, CTR. FOR AM. PROGRESS (Aug. 18, 2015), <https://www.americanprogress.org/issues/green/reports/2015/08/18/119511/when-you-cant-go-home/> [<https://perma.cc/RNG7-2877>].

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> See generally, *About Us*, INTERNAL DISPLACEMENT MONITORING CTR., <https://www.internal-displacement.org/about-us> [<https://perma.cc/64DQ-6NCR>] (last visited Oct. 3, 2022) (IDMC was established in 1998 as part of the Norwegian Refugee Council and is the “world’s definitive source of data and analysis on internal displacement.”).

<sup>74</sup> INTERNAL DISPLACEMENT MONITORING CTR., *supra* note 53; see also *Country Profile: United States*, INTERNAL DISPLACEMENT MONITORING CTR., <https://www.internal-displacement.org/countries/united-states>

movements, not people, reflecting the reality that an individual can be displaced multiple times.<sup>75</sup> The total number of IDPs reflects the number of people living in internal displacement, using empirical information as result of disasters as of December 31, 2020.<sup>76</sup> IDMC also modeled the risk of future displacement as result of disasters in the U.S., projecting an average of 232,658 displacements per year for sudden-onset hazards.<sup>77</sup> Interestingly, this projection does not account for the risk of wildfires alone, though recently wildfires have been exacerbated and instigated by other extreme weather conditions such as severe heat and strong winds.<sup>78</sup> Together, these projections paint a rather grim picture of the future of the climate crisis in the U.S. The data and history suggest that masses of people will be displaced every year and face housing insecurity without any formal acknowledgement of their unique plight or a guarantee that IDPs will have protected rights.

---

[<https://perma.cc/94WY-4U8E>] (last visited Nov. 28, 2022). As of the end of 2021, there were 573,000 new internal displacements and 56,000 IDPs in the United States due to disaster. *2022 Global Report on Internal Displacement*, INTERNAL DISPLACEMENT MONITORING CTR., 73–74 (Apr. 2022), [https://www.internal-displacement.org/sites/default/files/publications/documents/IDMC\\_GRID\\_2022\\_LR.pdf](https://www.internal-displacement.org/sites/default/files/publications/documents/IDMC_GRID_2022_LR.pdf) [<https://perma.cc/N7GM-8MCA>].

<sup>75</sup> *2022 Global Report on Internal Displacement*, *supra* note 74.

<sup>76</sup> *2021 Global Report on Internal Displacement*, *supra* note 53.

<sup>77</sup> See *Global Disaster Displacement Risk*, INTERNAL DISPLACEMENT MONITORING CTR., <https://www.internal-displacement.org/disaster-risk-model> [<https://perma.cc/K8PE-X3GP>] (last visited Nov. 28, 2022) (Sudden-onset hazards include earthquakes, floods, storm surges, tsunamis and cyclonic winds. IDMC projects 49,847 displacements as a result of earthquakes, 45,523 as a result of floods, 55,206 as a result of storm surges, 798 as a result of tsunamis, and 81,284 as a result of cyclonic winds per year in the U.S.).

<sup>78</sup> See Lustgarten, *supra* note 4 (describing the catastrophic Tubbs Fire in Santa Rosa, CA, which was dubbed an “impossible fire,” as “it was the kind of thing that might never have been possible if California’s autumn winds weren’t getting fiercer and drier every year, colliding with intensifying climate-driven heat and ever expanding development.”).

*B. Displacement Following Hurricane Katrina & Other Storms*

Past natural disasters in the United States illustrate the need to establish the rights of IDPs. In August of 2005, Hurricane Katrina hit the Gulf Coast of Louisiana, Mississippi, and Alabama, killing 1,833 people and displacing millions.<sup>79</sup> Approximately 1.5 million people fled from these states to escape the hurricane.<sup>80</sup> A decade later, thousands of people, around 40% of those who left, still had not returned to their homes.<sup>81</sup> Moreover, only 25% of Katrina evacuees relocated within a ten-mile radius of their previous county of residence; another 25% relocated more than 450 miles away; and 10% relocated at least 830 miles away.<sup>82</sup> Amnesty International reported that around 200,000 people were displaced from the Gulf Coast to Texas, Florida, and Washington, D.C.<sup>83</sup> Lack of access to adequate housing prevented the return of many former residents to the Gulf Coast; the Katrina recovery process was “plagued by the demolition of public housing[,] a lack of a commitment to rebuild lost rental units and provide affordable housing for residents,” and the inability of authorities to provide enough funding in a timely manner for homeowners to rebuild.<sup>84</sup> In fact, because public housing units were not replaced as part of the recovery process, there were fewer low income public housing apartments in 2015, a decade after Katrina, than there were before the storm hit.<sup>85</sup> Additionally,

---

<sup>79</sup> Sarah Pruitt, *Hurricane Katrina: 10 Facts About the Deadly Storm and Its Legacy*, HISTORY (Aug. 19, 2020) <https://www.history.com/news/hurricane-katrina-facts-legacy> [<https://perma.cc/36F2-NCD9>].

<sup>80</sup> Baussan, *supra* note 69.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *10 Years After Katrina, Many New Orleans Residents Permanently Displaced*, AMNESTY INT’L (Sept. 1, 2015), <https://www.amnestyusa.org/10-years-after-katrina-many-new-orleans-residents-permanently-displaced/> [<https://perma.cc/6KBB-CGXX>].

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* (“In 2015, the Housing Authority of New Orleans reports having 1,925 total public housing apartments available for low income people, over 3,000 less than what existed prior to the storm, meaning that thousands of former public housing families and residents in New Orleans were not provided a home to which to come back.”).

housing costs in New Orleans have risen significantly since Katrina, pricing people out from either staying in or returning to their pre-Katrina neighborhoods.<sup>86</sup> Consequently, many of those who were displaced by Katrina may be permanently displaced, unable to afford the cost of return.<sup>87</sup>

Similarly, a report by the Center for American Progress estimated that there were still 39,000 people displaced three years after Hurricane Sandy hit the East Coast in 2012.<sup>88</sup> One year after Hurricane Harvey hit Texas in 2017, 8% of the people impacted by the storm were not able to return to their homes and 15% of the hundreds of thousands of homes damaged by the storm were still unlivable.<sup>89</sup> Moreover, the Federal Emergency Management Agency (“FEMA”)<sup>90</sup> did not tally, “in a meaningful way,” the number of Texans still without permanent homes.<sup>91</sup> FEMA did, however, find that low-income communities of color were not recovering as quickly as their white and wealthy counterparts.<sup>92</sup>

---

<sup>86</sup> *See id.* (stating that rent for two-bedroom apartments in New Orleans rose 40% from 2005 to 2015).

<sup>87</sup> *See id.*

<sup>88</sup> Daniella Baussan & Miranda Peterson, *Lessons From the Storm*, CTR. FOR AM. PROGRESS (Oct. 28, 2015), <https://www.americanprogress.org/article/lessons-from-the-storm/> [<https://perma.cc/ZLD8-QSV5>].

<sup>89</sup> Brandon Formby, *Nearly 10 Percent of Texans Displaced by Harvey Still Haven’t Gone Home, Survey Says*, TEX. TRIB. (Aug. 23, 2018, 2:00 AM), <https://www.texastribune.org/2018/08/23/fema-and-texas-dont-know-how-many-people-hurricane-harvey-displaced/> [<https://perma.cc/8PM2-FNTH>].

<sup>90</sup> *See generally* *Organization*, FEMA, <https://www.fema.gov/about/organization> [<https://perma.cc/2JUG-DA3H>] (last visited Nov. 28, 2022) (“FEMA is a federal agency within the U.S. Department of Homeland Security (DHS)” that “manage[s] disaster response and recovery in disaster locations.”).

<sup>91</sup> Formby, *supra* note 90.

<sup>92</sup> *See generally id.* (discussing survey results showing that 60% of Black Texans impacted by the storm were not getting adequate assistance, compared to 40% of Hispanic Texans and 33% of White Texans; 50% of Texans with lower incomes—those making less than double the poverty level income—said they were not getting the help they need, compared to 32% of people with higher incomes; 27% of Hispanic Texans said their previous homes remained unlivable, 20% of Black Texans and 11% of White Texans; and 27% of Texans earning

Rent in some parts of Houston increased 50% post-Harvey, which put displaced people at a greater risk of eviction, further displacement, or homelessness.<sup>93</sup> The lack of affordable housing prevents people, particularly those from low-income households, from quickly recovering from disasters, condemning many to experience prolonged housing insecurity.

*C. Inadequate Affordable Housing in the U.S.*

In the U.S., disjointed federal and state laws and programs attempt to use a patchwork approach to address the lack of adequate affordable housing.<sup>94</sup> Codifying the right to adequate and affordable housing based on international human rights standards at the federal level would more effectively protect displaced people than the current hodgepodge of federal, state and local affordable housing policies.<sup>95</sup> According to the UN, roughly 75% of nations have constitutions or national laws that promote the full realization of the right to adequate housing, which in turn allows the right to become justiciable.<sup>96</sup> The U.S., however, does not yet recognize this fundamental right in its Constitution or federal law.<sup>97</sup> In 1972, the Supreme Court held in part in *Lindsey v. Normet* that the Constitution provides no “guarantee of access to dwellings of a particular quality. . . .”<sup>98</sup> Because there is no *guarantee* of housing, it follows that the federal government does not have an affirmative duty to *provide* affordable housing. Though the Housing Act of 1949—as well the Housing Acts of 1968, 1974 and 1990—strove

---

lower incomes said their previous homes weren’t safe, compared to 9% of higher earners).

<sup>93</sup> See AM. FLOOD COAL., *supra* note 24, at 9.

<sup>94</sup> *Advancing the Right to Housing in the United States: Using International Law as a Foundation*, N.Y.C. BAR ASS’N, 1–2 (Feb. 16, 2016) <https://www2.nycbar.org/pdf/report/uploads/20072632-AdvancingtheRighttoHousingIHR2122016final.pdf> [https://perma.cc/8TME-SXJG].

<sup>95</sup> See *id.* at 2.

<sup>96</sup> *Id.* at 4.

<sup>97</sup> *Id.* at 1.

<sup>98</sup> *Lindsey v. Normet*, 405 U.S. 56, 74 (1972).

for “the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family,” the federal government has never elaborated further on what this goal looks like in practice or provided sufficient resources to achieve it.<sup>99</sup> In 1974, to increase access to affordable housing, the U.S. Department of Housing and Urban Development (“HUD”)<sup>100</sup> implemented the Section 8 program,<sup>101</sup> which subsidized the construction and rehabilitation of housing for low income tenants and increased the stock of affordable housing in urban areas.<sup>102</sup> Unfortunately, in 1983, Congress stopped all new construction under Section 8, and “[t]he ‘new construction’ arm of Section 8 [was] eventually . . . replaced by various grants, tax incentives, and public-private partnership programs.”<sup>103</sup> Generally, from the 1980s onwards, the federal government has decreased funding for programs that create and subsidize affordable housing while increasing funding for tax incentive programs that utilize the private market to provide affordable housing.<sup>104</sup> The privatization of the affordable housing market indicates the federal government’s increasing disinvestment from public affordable housing over

---

<sup>99</sup> N.Y.C. BAR ASS’N, *supra* note 94, at 10.

<sup>100</sup> James Chen, *U.S. Department of Housing and Urban Development (HUD)*, INVESTOPEDIA (Feb. 28, 2022), <https://www.investopedia.com/terms/u/us-department-housing-urban-development-hud.asp> [https://perma.cc/H7JK-2G6F] (HUD is “a U.S. government agency created in 1965 as part of then-President Lyndon Johnson’s Great Society agenda to expand America’s welfare state. Its primary mission is improving affordable homeownership opportunities to support the housing market and homeownership in inner-city areas. HUD’s programs are geared toward increasing safe and affordable rental options, reducing chronic homelessness, fighting housing discrimination by ensuring equal opportunity in the rental and purchase markets, and supporting vulnerable populations.”).

<sup>101</sup> N.Y.C. BAR ASS’N, *supra* note 94, at 10.

<sup>102</sup> *Id.* at 11.

<sup>103</sup> *Id.*

<sup>104</sup> *Resilient Affordable Housing, Anti-Displacement & Gentrification*, GEORGETOWN CLIMATE CTR., <https://www.georgetownclimate.org/adaptation/toolkits/equitable-adaptation-toolkit/resilient-affordable-housing-anti-displacement-gentrification.html?chapter> [https://perma.cc/9YY2-TMF3] (last visited Nov. 28, 2022).



time.<sup>105</sup> Yet, in recent years, even federal funding for such tax incentive programs like the Low-Income Housing Tax Credit (“LIHTC”)<sup>106</sup> has “diminished significantly.”<sup>107</sup> Despite its decreased funding, the LIHTC program “remains the primary source of funding for creating and preserving affordable rental housing.”<sup>108</sup> Decreased federal funding for affordable housing programs, coupled with increased demand for affordable housing as climate change pushes frontline communities out of their homes, has largely created the current affordable housing crisis.<sup>109</sup>

In response to the federal government’s virtual abandonment of maintaining a sufficient affordable housing stock, local municipalities play an outsized role in both creating new affordable housing and preserving what already exists.<sup>110</sup> Interestingly, many individual states and municipalities actually surpass the federal government in the level of protections they provide people regarding housing rights, as “[a]pproximately twenty-five state constitutions contain provisions that reference and address poverty, public health and public welfare.”<sup>111</sup> Some states delegate the duty to provide for the welfare of their citizens to the state legislatures; some municipalities and counties, which the states and federal

---

<sup>105</sup> See Nena Perry-Brown, *Why Privatization Has Become the Public Housing Solution Du Jour*, GREATER GREATER WASH. (Aug. 12, 2020), <https://ggwash.org/view/78700/why-privatization-has-become-the-public-housing-solution-du-jour> [<https://perma.cc/7GMV-RWH7>].

<sup>106</sup> *Low-Income Housing Tax Credit*, OFF. OF POL’Y DEVELOPMENT AND RSCH., <https://www.huduser.gov/portal/datasets/lihtc.html> [<https://perma.cc/6TDE-EN7Z>] (last visited Nov. 28, 2022) (“The Low-Income Housing Tax Credit (LIHTC) program is the most important resource for creating affordable housing in the United States today. Created by the Tax Reform Act of 1986, the LIHTC program gives State and local LIHTC-allocating agencies the equivalent of approximately \$8 billion in annual budget authority to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing targeted to lower-income households.”).

<sup>107</sup> GEORGETOWN CLIMATE CTR., *supra* note 104.

<sup>108</sup> *Id.*

<sup>109</sup> *See id.*

<sup>110</sup> *Id.*

<sup>111</sup> N.Y.C. BAR ASS’N, *supra* note 94, at 13.

government should look to as models, have taken important steps to secure a right to adequate housing.<sup>112</sup>

In the U.S., there remains a great need for affordable housing, as there is a “shortage of 7 million rental homes [that are] affordable and available to extremely low-income renters, whose household incomes are at or below the poverty guideline or 30% of their area median income.”<sup>113</sup> Establishing a federal right to housing would ensure that adequate and affordable housing would become a national priority and would allow people to hold the government accountable in protecting the rights of economically marginalized and historically excluded populations who face housing insecurity and discrimination.<sup>114</sup> The same benefits that would follow from the codification of housing rights would also follow from the codification of the rights of IDPs by providing more effective protection through the availability of various legal tools to remedy their displacement.

## II. SHORTCOMINGS OF EXISTING FEDERAL DISASTER RELIEF

Although FEMA’s existing federal disaster relief may seem to address the issue of housing insecurity following a natural disaster, its policies are exclusive and inequitable.<sup>115</sup> Recent research shows that between “1999 to 2013, in counties with disaster damages of at

---

<sup>112</sup> *Id.* at 13–14 (discussing Madison and Dane County in Wisconsin, which passed a resolution in 2011 that recognized housing is a human right and “stressed that Madison, as a county, had an obligation to promote fair housing,” in line with international human rights standards).

<sup>113</sup> *The Gap: A Shortage of Affordable Rental Homes*, NAT’L LOW INCOME HOUS. COAL., <https://reports.nlihc.org/gap> [<https://perma.cc/2KL7-6ACK>] (last visited Nov. 28, 2022).

<sup>114</sup> See *Housing Rights Legislation: Review of International and National Instruments: United Nations Housing Rights Programme Report No. 1*, 33, UNITED NATIONS HUM. SETTLEMENTS PROGRAMME & OFF. OF THE HIGH COMM’R FOR HUM. RTS. (2002), <https://www.ohchr.org/sites/default/files/Documents/Publications/HousingRights.pdf> [<https://perma.cc/ZC4S-Q3N4>] (“Enshrining housing rights standards in national legal frameworks may be the only manner of ensuring equitable access to adequate housing recourses by disadvantaged groups and protecting the rights of economically marginalized populations.”).

<sup>115</sup> See AM. FLOOD COAL., *supra* note 24, at 2.

least \$10 billion . . . white households gained an average of \$126,000 in wealth, while Black and Hispanic households lost on average \$27,000 and \$29,000, respectively.”<sup>116</sup> The study credited much of this disparity to federal disaster assistance policies.<sup>117</sup> Both strict program eligibility requirements and procedural gaps in federal disaster aid disproportionately harm poor communities of color, non-English speakers, unbanked populations and renters.<sup>118</sup> For one, FEMA does not recognize “heirs’ property”—land that is informally inherited, i.e. passed down without a will—which is a form of landownership common among “Southern African American Settlement Communities.”<sup>119</sup> For example, after Hurricanes Katrina and Rita, approximately 20,000 property owners who did not have clear titles to their property were denied assistance from FEMA and HUD programs.<sup>120</sup>

Another pitfall of federal disaster assistance is that some programs favor wealthier households. Specifically, a significant “portion of post-disaster funding comes as HUD Community Development Block Grants for Disaster Recovery.”<sup>121</sup> In order to receive such funding after disasters that occurred between 2017 and

---

<sup>116</sup> *Id.* at 5.

<sup>117</sup> *Id.*

<sup>118</sup> *See generally id.* at 5–15 (discussing, for example, the ways in which the requirement of people receiving FEMA assistance to have a credit card, as well as the lack of FEMA assistants who speak languages other than English, continue to harm those communities who often need assistance the most).

<sup>119</sup> *Id.* at 7 (“An academic study from 2001 estimated that 41% of Black-owned land in the Southeast can be considered heirs’ property.”); *see also* Lizzie Presser, *Their Family Bought Land One Generation After Slavery. The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It.*, PROPUBLICA (Jul. 15, 2019), <https://features.propublica.org/black-land-loss/heirs-property-rights-why-black-families-lose-land-south/#:~:text=David%20Dietrich%2C%20a%20former%20co,is%20estimated%20to%20make%20up> [<https://perma.cc/7AA7-VMSW>] (“The practice [of heirs’ property] began during Reconstruction, when many African Americans didn’t have access to the legal system, and it continued through the Jim Crow era, when Black communities were suspicious of white Southern courts. In the United States today, 76% of African Americans do not have a will, more than twice the percentage of white Americans . . . The U.S. Department of Agriculture has recognized it as ‘the leading cause of Black involuntary land loss.’”).

<sup>120</sup> *See* AM. FLOOD COAL., *supra* note 24, at 7.

<sup>121</sup> *Id.*

2019, HUD required a home to “have real property FEMA-inspected damage[s] of at least \$8,000, personal property damages of at least \$3,500 or flooding over [one] foot.”<sup>122</sup> As a result, “[h]omeowners with a lower damage estimate were ineligible for the funds.”<sup>123</sup> Therefore, many low-income households were excluded from disaster relief because their households and belongings did not have the requisite market value.<sup>124</sup> For example, in the wake of Hurricane Harvey, approximately “two-thirds of very low-income households in Texas” were deemed ineligible for HUD’s disaster relief program.<sup>125</sup> Similarly, FEMA’s Individual Assistance Program (“IAP”), which provides grants for home repairs,<sup>126</sup> does not adequately provide relief for low-income earning people. IAP purports to return homes to a “safe and sanitary living or functioning condition.”<sup>127</sup> In practice, however, low-income households receive insufficient funds to restore their homes to their previous condition.<sup>128</sup> FEMA also disproportionately rejects low-income applicants for IAP.<sup>129</sup> For example, of 741,000 Texas applicants rejected for IAP after Hurricane Harvey, 48% of denials were applicants earning less than \$30,000, even though they only made up 28% of applicants.<sup>130</sup> Because it is challenging to do so without a lawyer, “low-income individuals rarely appeal their [FEMA] rejections.”<sup>131</sup>

Additionally, disaster recovery funding favors homeowners over renters even though renters may need the funding more, given that renters are less likely than homeowners to be financially secure and twice as likely as homeowners to be racial minorities.<sup>132</sup> For

---

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *See id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Individuals and Households Program*, FEMA, <https://www.fema.gov/assistance/individual/program> [https://perma.cc/8DS4-AFF4] (last updated Oct. 11, 2022).

<sup>127</sup> AM. FLOOD COAL., *supra* note 24, at 8.

<sup>128</sup> *See id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 9.

example, “[i]n New Jersey, 40% of homes damaged by Hurricane Sandy were renter occupied, but tenants only received 25% of the [FEMA] assistance dedicated to the state.”<sup>133</sup> Importantly, Congress does not control how FEMA allocates its funds between “homeowners, renters, and the homeless population.”<sup>134</sup> In 2010, the Government Accountability Office (“GAO”)<sup>135</sup> encouraged Congress to provide more guidance on funding allocations among homeowners and renters given the systemic disadvantages renters face.<sup>136</sup>

Several existing FEMA programs also disfavor immigrant and non-English speaking communities. For one, certain FEMA programs are not available to all immigrants and undocumented individuals.<sup>137</sup> Furthermore, in the wake of a natural disaster, FEMA Disaster Survivor Assistance crews<sup>138</sup> visit affected areas to help people apply for assistance, using census data on languages spoken in the area to determine who to send.<sup>139</sup> However, because of low Census response rates by people not proficient in English, the data

---

<sup>133</sup> *Id.*

<sup>134</sup> See AM. FLOOD COAL., *supra* note 24, at 9.

<sup>135</sup> *What GAO Does*, GAO, <https://www.gao.gov/about/what-gao-does> [<https://perma.cc/TSY8-JKED>] (last visited Nov. 28, 2022) (“GAO provides Congress, the heads of executive agencies, and the public with timely, fact-based, non-partisan information that can be used to improve government and save taxpayers billions of dollars.”).

<sup>136</sup> See AM. FLOOD COAL., *supra* note 24, at 9.

<sup>137</sup> *FAQ: Citizenship Status and Eligibility for Disaster Assistance*, FEMA (Mar. 18, 2021), <https://www.fema.gov/press-release/20210318/faq-citizenship-status-and-eligibility-disaster-assistance> [<https://perma.cc/358M-EKE6>] (“You must be a U.S. Citizen, Non-Citizen National, or a Qualified Alien in order to be eligible for FEMA cash assistance programs: Individuals and Households Program Assistance and Disaster Unemployment Assistance.”).

<sup>138</sup> *FEMA in the Field: Disaster Survivor Assistance and Disaster Recovery Centers*, FEMA (Oct. 2, 2021), <https://www.fema.gov/fact-sheet/fema-field-disaster-survivor-assistance-and-disaster-recovery-centers> [<https://perma.cc/68RC-8G4>] (“Disaster Survivor Assistance (DSA) crews go into communities within days, sometimes hours, of a disaster . . . DSA crews primarily focus on addressing the needs of underrepresented populations that may be hard to reach by traditional channels. Their mission is to assess, and report critical and emerging disaster needs to FEMA leadership for decision-making purposes.”).

<sup>139</sup> AM. FLOOD COAL., *supra* note 24, at 10.

is unreliable.<sup>140</sup> This leads to a shortage of personnel who speak the appropriate languages, which then disproportionately obstructs the recovery process for immigrant communities and communities of color.<sup>141</sup>

Another disaster recovery program that excludes many in need is FEMA's Transitional Shelter Assistance ("TSA"), which pays for temporary shelter in hotels when a home is uninhabitable for a prolonged period of time, but grantees must have a credit card to pay for incidental expenses.<sup>142</sup> Requiring a credit card excludes many of the most vulnerable people from accessing such disaster relief, as 26% of the poorest fifth of Americans do not have a bank account.<sup>143</sup> In contrast, housing rights advocates support HUD's Disaster Housing Assistance Program ("DHAP") for expanding access to the most vulnerable populations, including low-income households and people experiencing homelessness.<sup>144</sup> DHAP provides temporary rental assistance and case management services—helping people find permanent housing, secure employment, and access benefits—for displaced people and relief for the low income households excluded by TSA.<sup>145</sup> DHAP is managed and run by HUD and its network of local public housing authorities, but it must be activated by FEMA through an interagency agreement with HUD.<sup>146</sup> Still, DHAP is not perfect; it may not be utilized without FEMA entering into an interagency agreement with HUD, thus leaving potential for

---

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 10–11.

<sup>142</sup> *Id.* at 10.

<sup>143</sup> *Id.* ("Disasters can set off a chain reaction by causing people with lower credit scores, an attribute correlated with low income levels, to lose access to credit, making them ineligible to receive TSA funds. People with pre-disaster credit scores below 650 are 4.5% likely to have access to credit within a year after a disaster because they missed bills or were evicted.").

<sup>144</sup> *Disaster Housing Assistance Program*, NAT'L LOW INCOME HOUS. COAL., 1 (Oct. 31, 2017), <https://nlihc.org/sites/default/files/DAHP-Program.pdf> [<https://perma.cc/8KYG-XGUU>].

<sup>145</sup> *Id.*

<sup>146</sup> Ed Gramlich & Sonya Acosta, *Disaster Housing Programs*, NAT'L LOW INCOME HOUS. COAL., 6–45 (2019), [https://nlihc.org/sites/default/files/AG-2019/06-11\\_Disaster-Housing-Programs.pdf](https://nlihc.org/sites/default/files/AG-2019/06-11_Disaster-Housing-Programs.pdf) [<https://perma.cc/3MEW-X55K>].

underutilization of DHAP's benefits.<sup>147</sup> Under the Trump administration, FEMA did not activate DHAP even in the wake of the devastating Hurricane Maria that struck Puerto Rico.<sup>148</sup> A 2009 disaster housing plan created by the federal government recommended that Congress make DHAP permanent,<sup>149</sup> which would alleviate financial duress and housing insecurity for the most vulnerable displaced by natural disaster. Perhaps it is time for Congress to revisit making DHAP permanent in the interest of making disaster recovery more accessible.

### III. ESTABLISHING THE RIGHTS OF IDPs IN THE U.S.

The first step towards protecting people displaced by natural disasters is establishing the rights of internally displaced people as laid out in the UN's Guiding Principles. Implementing the Guiding Principles into federal law—by guaranteeing access to affordable, climate resilient housing and providing legal recourse where rights are denied—would guarantee IDPs more permanent protection than existing or even improved temporary, ad hoc FEMA programs. Further, while the Guiding Principles alone establish an important framework regarding the general rights of IDPs and the duties of relevant authorities, the U.S. should expand upon them to create more comprehensive and targeted solutions that serve the unique needs of IDPs in the U.S.

#### *A. Implementing the Guiding Principles into U.S. Law*

The Guiding Principles, a single document meant to guide all nations on the treatment of IDPs, lays out all of the human rights guaranteed to IDPs under existing human rights and humanitarian

---

<sup>147</sup> *Id.*

<sup>148</sup> Bianca Padró Ocasio, *Hurricane Maria Evacuees Should Get Same Aid Used After Katrina, Sandy Advocates Say*, ORLANDO SENTINEL (Jul. 20, 2018), <https://www.orlandosentinel.com/news/breaking-news/os-fema-evacuees-temporary-programs-20180717-story.html> [https://perma.cc/6BA4-LQ27] (FEMA rejected implementing DHAP after Hurricane Maria because there are “other programs that provide assistance with less bureaucratic red tape.”).

<sup>149</sup> Gramlich & Acosta, *supra* note 146.

law.<sup>150</sup> Principles 10-23 delineate a broad range of economic, social, cultural, civil, and political rights. Principle 18(1) provides “the right to an adequate standard of living.”<sup>151</sup> Principle 18(2) states that “competent authorities shall provide [IDPs] with and ensure safe access to . . . [b]asic shelter and housing.”<sup>152</sup> Principles 28-30 provide that IDPs “have the right to assistance from competent authorities in voluntary, dignified and safe return, resettlement or local integration.”<sup>153</sup> Specifically, Principle 28 states:

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow [IDPs] to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled [IDPs].
2. Special efforts should be made to ensure the full participation of [IDPs] in the planning and management of their return or resettlement and reintegration.<sup>154</sup>

Importantly, Principle 25 provides that the “primary duty and responsibility for providing humanitarian assistance to [IDPs] lies with national authorities.”<sup>155</sup> This provision, once implemented into federal law, would provide displaced persons with justiciable rights. Thus, IDPs could bring claims in federal courts regarding the federal government’s failure to ensure that they were able to return to their hometown or resettle in a locality of their choosing, as returning or resettling must be voluntary.

---

<sup>150</sup> Deng, *supra* note 48.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> U.N. OFF. OF THE HIGH COMM’R. FOR HUM. RTS., *supra* note 42.

<sup>154</sup> Deng, *supra* note 48.

<sup>155</sup> *Id.*



*B. IDPs' Right to Affordable Housing & the Federal  
Government's Duty to Provide It*

Given that the lack of affordable housing has been a driving force in condemning people to permanent displacement after natural disasters,<sup>156</sup> the federal government must provide adequate housing for IDPs, which would allow IDPs to exercise their right to return or resettle voluntarily and with dignity in accordance with Principles 18 and 28 of the Guiding Principles. Without adequate affordable housing, the rights of IDPs to return and resettle would be functionally meaningless.<sup>157</sup>

The Homes Guarantee, a policy proposal introduced by the People's Action Coalition in September of 2019, advocates for building 12 million units of social housing over the next decade, reinvesting in public housing, protecting tenants, and de-commodifying housing, among other recommendations.<sup>158</sup> Similarly, Congresswomen Pramila Jayapal introduced the Housing is a Human Right Act of 2021 that has yet to be passed, but “establishes and expands programs to assist homeless and housing-unstable individuals and establishes new real property-related taxes to fund specified [HUD] programs.”<sup>159</sup> If the U.S. recognized the rights of IDPs, such policy proposals could be expanded to include provisions for ensuring that IDPs do not face homelessness in the wake of natural disasters. The federal government's affirmative duty to provide affordable housing for IDPs could potentially take shape in many ways, but it would at the very least require the federal

---

<sup>156</sup> AMNESTY INT'L, *supra* note 83.

<sup>157</sup> While codifying the right to affordable housing in accordance with international human rights standards would be beneficial for all people in the U.S., the limited scope of this Note focuses on advocating for housing rights in the context of IDPs.

<sup>158</sup> Patrick Sisson, *How the Homes Guarantee Proposal Could Make Housing a Right*, CURBED (Sept. 16, 2019), <https://archive.curbed.com/2019/9/16/20867963/for-rent-apartment-affordable-housing-homes-guarantee> [<https://perma.cc/DW9T-37U5>] (describing the People's Action Coalition as a “network representing roughly one million progressive activists in groups spanning [thirty] states”).

<sup>159</sup> *Summary: H.R.3772 — 117th Congress (2021-2022)*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/3772?r=5&s=1> [<https://perma.cc/BUZ2-8HTJ>] (last visited Nov. 28, 2022).

government to increase the affordable housing stock in this country.<sup>160</sup>

*C. Investing in Climate Resilient Affordable Housing*

To fortify the already existing affordable housing stock, the federal government should invest in making existing affordable housing climate resilient in a manner that does not pass costs onto renters and IDPs. Climate resilience ensures that the property can both endure a natural disaster and return to normal operations soon after such event.<sup>161</sup> For example, in flood-prone areas, climate resilient housing would have leak-proof roofing, adequate drainage, and critical equipment elevated from the ground floor.<sup>162</sup>

As previously discussed, low-income residents, communities of color, the elderly, and people with disabilities are most impacted and harmed by the worsening climate and the affordable housing crisis. It is those frontline communities that need climate resilient affordable housing as soon as possible.<sup>163</sup> Similarly, cost-burdened households<sup>164</sup> are “more likely to face poor health and underemployment and less likely than other households to access educational opportunities or increase wealth.”<sup>165</sup> Moreover, households with lower rent burdens are more likely to adapt and

---

<sup>160</sup> See *The Problem*, NAT’L LOW INCOME HOUS. COAL., <https://nlihc.org/explore-issues/why-we-care/problem> [<https://perma.cc/FMT2-673L>] (last visited Nov. 28, 2022) (stating that “[n]ationally, there is a shortage of more than 7 million affordable homes for our nation’s 10.8 million plus extremely low-income families,” and “there is no state or county where a renter working full-time at minimum wage can afford a two-bedroom apartment”).

<sup>161</sup> See Bettina Bergöö, *We Must Invest in Climate-Ready Affordable Housing Now*, NAT. RES. DEF. COUNCIL (June 30, 2020), <https://www.nrdc.org/experts/bettina-bergoo/we-must-invest-climate-ready-affordable-housing-now> [<https://perma.cc/6QH7-9HUE>].

<sup>162</sup> *Id.*

<sup>163</sup> GEORGETOWN CLIMATE CTR., *supra* note 104.

<sup>164</sup> *The Gap: A Shortage of Affordable Rental Homes*, NAT’L LOW INCOME HOUS. COAL., <https://reports.nlihc.org/gap/about> [<https://perma.cc/2QUE-RJJC>] (last visited Nov. 28, 2022) (“A household is cost-burdened when it spends more than 30% of its income on rent and utilities and severely cost-burdened when it spends more than 50%.”).

<sup>165</sup> GEORGETOWN CLIMATE CTR., *supra* note 104.

recover after a natural disaster.<sup>166</sup> Public investment in creating climate resilient affordable housing will not only alleviate cost-burdened households, but it will also improve widespread housing stability,<sup>167</sup> which generally “enhance[s] social cohesion, build[s] community ties, and enable[s] residents to stay better connected.”<sup>168</sup> Simply put, climate resilience builds community resilience and ultimately saves money in the long run by lowering recovery costs.<sup>169</sup> However, implementing climate resilience measures does not lead to immediate cost savings the same way that energy and water efficiency measures quickly lower utility bills.<sup>170</sup> Therefore, the federal government must make additional efforts, perhaps by subsidizing property developers and owners to ensure that property owners do not raise rents to pay for climate resiliency, which could exacerbate the effects of displacement and gentrification.<sup>171</sup> Additionally, the federal government should implement policies that mitigate climate gentrification and ensure that local communities, particularly low-income households, are not pushed out as collateral for the short-term increased costs of making affordable housing climate resilient.<sup>172</sup>

---

<sup>166</sup> *Id.*

<sup>167</sup> *See id.* (explaining the necessity for creating climate resilient affordable housing).

<sup>168</sup> *Id.*

<sup>169</sup> *See Global Program for Resilient Housing*, WORLD BANK (Jan. 31, 2022), <https://www.worldbank.org/en/topic/disasterriskmanagement/brief/global-program-for-resilient-housing> (“The World Bank’s *Lifelines* reports finds that the overall net benefit of investing in resilient infrastructure in developing countries amounts to \$4.2 trillion over the lifetime of new infrastructure, with \$4 benefit for each \$1 invested. . . . [F]or every dollar invested in infrastructure strengthened beforehand, \$10 can be saved in reconstruction efforts later.”).

<sup>170</sup> Bergöö, *supra* note 161.

<sup>171</sup> *See* Isabelle Anguelovski et al., *Why Green ‘Climate Gentrification’ Threatens Poor and Vulnerable Populations*, PNAS (Dec. 26, 2019), <https://www.pnas.org/content/116/52/26139> [<https://perma.cc/ED7X-R9AL>].

<sup>172</sup> *Id.* (arguing that climate gentrification is a climate injustice that “arises because [low-income communities, people of color, and migrant communities] are among the social groups most likely to experience residential and social displacement—in short and mid-term—from green climate infrastructure and its associated gentrification risks”).

Existing federal funding programs for affordable housing should be modified and expanded to include retrofitting affordable housing<sup>173</sup>—to be more energy efficient and resilient—and creating new climate resilient affordable housing. One existing federal funding program for affordable housing is the HOME Investment Partnership Program,<sup>174</sup> which is a “block grant administered by HUD to fund affordable housing . . . and must be used for one of four purposes: rehabilitation of owner-occupied housing; homebuyer assistance; rental housing construction and rehabilitation; or tenant-based rental assistance.”<sup>175</sup> Retrofitting already existing affordable housing to be more climate resilient could conceivably fall under one of the purposes of the HOME Investment Partnership Program. Similarly, the National Housing Trust Fund (“NHFT”)<sup>176</sup> is a “dedicated source of revenue for the development and preservation of rental housing for low-income households.”<sup>177</sup> NHFT operates similarly to HOME Investment Partnership Program, but focuses more on assisting rental housing for households of lower income levels.<sup>178</sup> Thus, NHFT could also

---

<sup>173</sup> Emma Frost, *Emergency Response: Climate Crisis Demands a Building Revolution*, ASHDEN (Sept. 26, 2019), <https://ashden.org/news/emergency-response-climate-crisis-demands-a-building-revolution/> [<https://perma.cc/DP2N-S5ZQ>] (defining retrofitting as “making older building more energy efficient”).

<sup>174</sup> *Home Investment Partnership Program*, HUD, [https://www.hud.gov/program\\_offices/comm\\_planning/home](https://www.hud.gov/program_offices/comm_planning/home) [<https://perma.cc/ZZ87-F578>] (last visited Nov. 28, 2022) (“The HOME Investment Partnerships Program (HOME) provides formula grants to states and localities that communities use - often in partnership with local nonprofit groups—to fund a wide range of activities including building, buying, and/or rehabilitating affordable housing for rent or homeownership or providing direct rental assistance to low-income people. HOME is the largest federal block grant to state and local governments designed exclusively to create affordable housing for low-income households.”).

<sup>175</sup> GEORGETOWN CLIMATE CTR., *supra* note 104.

<sup>176</sup> *National Housing Trust Fund*, NAT’L LOW INCOME HOUS. COAL., <https://nlihc.org/explore-issues/projects-campaigns/national-housing-trust-fund> [<https://perma.cc/VX6M-69WX>] (last visited Nov. 28, 2022) (“The National Housing Trust Fund (HTF) is the first new housing resource since 1974 targeted to the building, rehabilitating, preserving, and operating rental housing for extremely low-income people.”).

<sup>177</sup> GEORGETOWN CLIMATE CTR., *supra* note 104.

<sup>178</sup> *Id.*

be expanded to apply to making existing affordable rental housing climate resilient. The federal government should increase funding to these already existing programs, so that the additional funds can be used to make affordable housing climate resilient.

On April 19, 2021, Senator Bernie Sanders and Representative Alexandria Ocasio-Cortez announced the introduction of the Green New Deal for Public Housing Act.<sup>179</sup> The proposed legislation seeks to improve public housing and “living conditions for nearly [2] million people living in over 950,000 public housing homes” by “retrofitting, rehabilitating and decarbonizing . . . the nation’s entire public housing stock.”<sup>180</sup> This proposal would surely make public housing more sustainable and energy efficient,<sup>181</sup> but it does not necessarily make public housing more climate resilient. Policies should be developed that specifically call for federal funding to make affordable housing both climate resilient and energy efficient. This effort to make existing affordable housing climate resilient should extend to any and all new affordable housing developments.

*D. Data Collection Necessary for Federal Government to  
Provide Adequate Relief*

For the federal government to address the housing needs of and provide appropriate natural disaster relief to IDPs, the federal government should collect data on the number, location, migration patterns, and living conditions of IDPs. In the aftermath of

---

<sup>179</sup> *NEWS: Sanders and Ocasio-Cortez Rollout Green New Deal for Public Housing Act*, BERNIE SANDERS U.S. SENATOR FOR VT. (Apr. 19, 2021), <https://www.sanders.senate.gov/press-releases/news-sanders-and-ocasio-cortez-rollout-green-new-deal-for-public-housing-act/> [https://perma.cc/7CQN-QDPM].

<sup>180</sup> *Id.*

<sup>181</sup> *See id.* (“The Green New Deal for Public Housing would transition the entire public housing stock of the United States, as swiftly and seamlessly as possible, into zero-carbon, highly energy-efficient communities that produce on-site renewable energy, while ensuring all public housing is brought up to safe and sanitary conditions, and workforce capacity, family self-sufficiency programs, and community development are expanded [ . . . ] With its focus on transforming nearly 1 million units of public housing, the Green New Deal for Public Housing Act will spur economies of scale for weatherization, retrofitting, and renewable energy, making them more cost effective and livable throughout the country.”).

Hurricane Katrina, the U.S. Bureau of Labor Statistics repurposed its monthly Current Population Survey (“CPS”)<sup>182</sup> “to help determine the location and demographics of Katrina victims without revealing their personal information.”<sup>183</sup> The federal government could mandate that the CPS be used in this way after all natural disasters to ensure that there is accurate data on who is being displaced and where they are so that disaster relief can provide affordable housing, rental assistance, and other aid for all IDPs.

Although the U.S. Census Bureau also collects local data that is “critical to emergency planning, preparedness, and recovery efforts,”<sup>184</sup> federal agencies do not collect data specific to displacement after natural disasters.<sup>185</sup> For example, the American Community Survey (“ACS”)<sup>186</sup> provides demographic, socioeconomic, and housing data that helps inform recovery efforts and future emergency planning,<sup>187</sup> but does not collect data on displacement. Furthermore, the Census Bureau provides two data tools tailored for emergency management officials: OnTheMap for Emergency Management (“OtM EM”) and Census Business Builder: Regional Analyst Edition (“CBB RAE”).<sup>188</sup> OtM EM is a

---

<sup>182</sup> *Current Population Survey (CPS)*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/cps.html> [https://perma.cc/2VBM-SRD7] (last visited Nov. 28, 2022) (“The Current Population Survey (CPS), sponsored jointly by the U.S. Census Bureau and the U.S. Bureau of Labor Statistics (BLS), is the primary source of labor force statistics for the population of the United States.”).

<sup>183</sup> Baussan, *supra* note 69.

<sup>184</sup> *Emergency Management*, U.S. CENSUS BUREAU, <https://www.census.gov/topics/preparedness.html> [https://perma.cc/Z842-UKQA] (last visited Oct. 3, 2022).

<sup>185</sup> Baussan, *supra* note 69.

<sup>186</sup> *American Community Survey*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/acs> [https://perma.cc/VWY3-4R88] (last visited Nov. 28, 2022) (“The American Community Survey (ACS) helps local officials, community leaders, and business understand the changes taking place in their communities. It is the premier source for detailed population and housing information about our nation.”).

<sup>187</sup> Andrew W. Hait, *Knowing Who Lives Where Is Key to Recovery*, U.S. CENSUS BUREAU (Aug. 27, 2018), <https://www.census.gov/library/stories/2018/08/emergency-management-and-census.html> [https://perma.cc/R96E-RC6].

<sup>188</sup> *Id.*

dynamic digital map<sup>189</sup> that “overlays the boundaries of tropical storms, wildfires, floods, severe winter weather and other disaster declaration areas onto a map of key Census Bureau demographic and workforce data.”<sup>190</sup> OtM EM is updated every four hours using data from live feeds provided by federal partners, like the National Oceanic and Atmospheric Administration (“NOAA”), and provides detailed information on natural disasters as they occur.<sup>191</sup> This information is archived, allowing emergency management officials to compare data over time and prepare for future emergencies.<sup>192</sup> Similarly, the CBB RAE<sup>193</sup> allows emergency management officials to create maps using Census Bureau data that can help them plan evacuation routes.<sup>194</sup> While existing Census Bureau data tools like OtM EM and CBB RAE provide useful information that will help with emergency preparedness, they do not explicitly capture data on displacement following natural disasters.<sup>195</sup> If possible, such emergency preparedness data tools should be retooled to track displacement trends and migration patterns as a result of disasters. While collecting data on IDPs through the Census Bureau or any other agency, the federal government must also take special care not to use the data they collect to bolster the surveillance state,<sup>196</sup> as

---

<sup>189</sup> See *OnTheMap for Emergency Management*, U.S. CENSUS BUREAU, <https://onthemap.ces.census.gov/em/> [<https://perma.cc/7YQJ-9HZ6>] (last visited Nov. 28, 2022).

<sup>190</sup> Hait, *supra* note 187.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Census Business Builder: Regional Analyst Edition*, U.S. CENSUS BUREAU, <https://cbb.census.gov/rae/#> [<https://perma.cc/S9DL-PGQX>] (last visited Nov. 28, 2022).

<sup>194</sup> Hait, *supra* note 187.

<sup>195</sup> *Id.*

<sup>196</sup> See *NSA Surveillance*, ACLU, <https://www.aclu.org/issues/national-security/privacy-and-surveillance/nsa-surveillance> [<https://perma.cc/Z6Y9-B96Z>] (last visited Nov. 28, 2022) (“The National Security Agency’s mass surveillance has greatly expanded in the years since September 11, 2001. Disclosures have shown that, until recently, the government regularly tracked the calls of hundreds of millions of Americans. Today, it continues to spy on vast but unknown number of Americans’ international calls, text messages, web-browsing activities, and emails.”); see also Karl Miner, *The Surveillance State Is a Reality*, BLOOMBERG (Jun. 26, 2020),

many communities of color and immigrant communities have understandably felt targeted by the federal government through the U.S. census both historically<sup>197</sup> and in recent years.<sup>198</sup> Data on IDPs collected by the federal government should be depersonalized<sup>199</sup> and used only to show the number of people displaced after a disaster, the number of new displacements triggered by a specific disaster, general trends of relocation after a disaster, and how many IDPs were able to return to their homes, allowing the federal government to then provide appropriate funding and resources to IDPs.

---

<https://www.bloomberg.com/news/newsletters/2020-06-26/the-surveillance-state-is-a-reality> [<https://perma.cc/X8PS-ERJZ>] (“It’s really not a question of whether surveillance states are starting to take hold. Many civil-rights advocates say it’s already happened. The debate has been intensified by the proliferation of tracing apps during the Covid-19 pandemic and protests that followed the death of George Floyd.”).

<sup>197</sup> See Hansi Lo Wang, *Some Japanese-Americans Wrongfully Imprisoned During WWII Oppose Census Question*, NPR (Dec. 26, 2018), <https://www.npr.org/2018/12/26/636107892/some-japanese-americans-wrongfully-imprisoned-during-wwii-oppose-census-question> [<https://perma.cc/J7G6-672X>] (“The U.S. government responded to the [Pearl Harbor] attack, in part, by using Census Bureau information to determine where Japanese-Americans lived on the West Coast in order to remove them from their homes and imprison them.”).

<sup>198</sup> See Hansi Lo Wang, *Immigration Hard-Liner Files Reveal 40 Year Bid Behind Trump’s Census Obsession*, NPR (Feb. 15, 2021), <https://www.npr.org/2021/02/15/967783477/immigration-hard-liner-files-reveal-40-year-bid-behind-trumps-census-obsession> [<https://perma.cc/K5CL-SNFJ>] (“Trump officials wanted to use the census to directly ask for the citizenship status of every person living in every household in the country for the first time in U.S. history. . . . Many opponents of the citizenship question argued it was originally intended to depress census participation. Under federal law, no government agency or court can use personal information collected by the Census Bureau against anyone. But a long history of distrust of the census has made many noncitizens, Latinos, Asian Americans, and other historically undercounted groups wary of telling the government their household’s citizenship status.”).

<sup>199</sup> *Depersonalized Data Definition*, LAW INSIDER, <https://www.lawinsider.com/dictionary/depersonalized-data> [<https://perma.cc/ZZR4-KD9G>] (last visited Nov. 28, 2022) (“[D]epersonalized data means micro-data devoid of any information that may allow identifying the persons the data pertains to.”).



## CONCLUSION

Given the worsening climate crisis that will continue to displace more and more people and the inadequacies of existing federal disaster relief and recovery programs, it is imperative that the U.S. government implement the Guiding Principles into U.S. federal law to formalize the rights of IDPs, including the right to return, resettle, and necessarily the right to affordable housing. In order to effectively enforce such rights, the federal government should also provide more affordable housing, invest in making the existing affordable housing stock and new affordable housing developments climate resilient and collect accurate data on IDPs to provide adequate disaster relief, taking special care to not exacerbate gentrification and surveillance concerns. Codifying the rights of IDPs would go a long way in helping to remedy larger systemic issues such as the racial wealth gap and rampant housing insecurity and would ultimately further environmental justice.<sup>200</sup> Providing temporary shelter after a storm is not enough; people need stable, affordable and climate resilient housing to weather the next storm.

---

<sup>200</sup> *Learn About Environmental Justice*, U.S. ENV'T PROT. AGENCY, (Sept. 6, 2022), <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> [<https://perma.cc/CK7N-AEXF>] (“Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws regulations and policies.”).