

The United States Can Protect Those Who Suffer Humanitarian Emergencies: How and Why Immigration Policy Should Be Amended to Assist Crisis Migrants

Joana Jankulla*

INTRODUCTION

In times of humanitarian crisis, migration ensues.¹ This migration is often a result of multiple factors that have built up over time and exploded during a pivotal moment.² In the summer of 2021, Haiti suffered multiple humanitarian emergencies: a presidential assassination, an earthquake, and a tropical storm.³ While these crises caused an uptick in migration, decades of political strife, meddling, and poor disaster management made these crises exponentially worse.⁴ This migration led Haitian migrants to the Southern Border as they sought stability in the United States.⁵ The photos of border patrol officers on horseback violently attacking Haitians circulated the United States.⁶ These cruel and horrific scenes showcased the U.S. agents' treatment of the migrants as they fled the humanitarian emergency in their country.⁷

* J.D., *New England Law* | Boston (2023). B.A., Classical Studies with high honors & Language and Linguistics, Brandeis University (2018). This Note was inspired from my time with the Afghan Refugee Support Project, where I had the honor of working for Professor Dina Francesca Haynes. Thank you to my mentor on this Note, Samantha Howland Zelaya, as well as Briana Broberg, and the members of the *New England Law Review*. Finally, thank you to my sister Kleopatra, my friends, and my partner Ian, for always supporting me and my aspirations.

¹ See SUSAN F. MARTIN ET AL., *HUMANITARIAN CRISES AND MIGRATION*, 30 (2014).

² See *id.*

³ Nicole Narea, *The Afghan Refugee Crisis Has Revealed the Artificial Limits of America's Will to Welcome*, *VOX* (Sept. 23, 2021, 11:10 AM EDT), <https://perma.cc/T9L9-KCKJ>.

⁴ See *id.*

⁵ Eileen Sullivan & Zolan Kanno-Youngs, *Images of Border Patrol's Treatment of Haitian Migrants Prompt Outrage*, *N.Y. TIMES*, <https://perma.cc/5W9L-3NTT> (last updated Oct. 19, 2021).

⁶ *Id.*

⁷ *Id.*

In the summer of 2021, Afghanistan's government collapsed as the Taliban took over following the departure of U.S. presence.⁸ While this crisis caused a surge in migration, it was more accurately the culmination of decades of military occupation coupled with an unstable government.⁹ Again, images of Afghan nationals trying to force their way out of the country surfaced—hoping to end up on flight manifests and escape the repressive Taliban regime.¹⁰ The United States' subsequent attempts to maintain a calm exit received backlash as chaos persisted.¹¹ Ultimately, while some found a way out, many could not and remain living in fear.¹²

Immigration policy in the United States is highly discretionary when it comes to addressing humanitarian emergencies.¹³ This Note will argue short- and long-term solutions that should be implemented in the United States to assist crisis migrants during times of humanitarian emergencies. First, this Note will discuss that in the short-term, Humanitarian Parole and Temporary Protected Status should be implemented to assist in immediate temporary protections for at-risk migrants. Then, this Note will argue that in addition to policies that assist in the short-term, there must also be long-term policy changes that allow migrants to become permanent residents. Finally, this Note will determine the reasons why Adjustment Acts should be passed during times of humanitarian emergencies.

Part I of this Note provides information on immigration policy in the United States. Furthermore, Part I gives a history of Afghanistan and Haiti. Part II gives reasons why the United States should develop a streamlined approach in dealing with humanitarian emergencies. Part III outlines short-term, temporary immigration solutions that should be established when dealing with humanitarian emergencies. Finally, Part IV explains why the United States should offer long-term immigration solutions to crisis migrants fleeing emergencies in their home country.

I. Background

A. Immigration Law and Policy

1. Humanitarian Parole

The Immigration and Nationality Act (“INA”) outlines important laws

⁸ David Zucchino, *The U.S. War in Afghanistan: How It Started, and How It Ended*, N.Y. TIMES (Oct. 7, 2021), <https://perma.cc/X3KT-5NDX>.

⁹ *See id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Dan De Luce, *U.S. 'Left Behind' 78,000 Afghan Allies in Chaotic Withdrawal: NGO Report*, NBC NEWS (Mar. 1, 2022, 4:58 PM EST), <https://perma.cc/FD8M-GDKL>.

¹³ *See generally Humanitarian Parole*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://perma.cc/MNB2-VGQP> (last visited May 29, 2023) (explaining that this policy addresses urgent humanitarian reasons and is discretionary).

regarding immigration, naturalization, refugee assistance, and terrorist removal procedures.¹⁴ The Attorney General may grant a migrant Humanitarian Parole (“HP”) as a way to enter the United States “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.”¹⁵ This grant “allows an individual who may be inadmissible or otherwise ineligible for admission into the United States to be in the United States for a temporary period.”¹⁶ These migrants must be outside of the United States to apply for HP.¹⁷ This grant does not bestow a parolee any permanent status, but only a temporary protection where they may be in the United States for a predetermined period (generally one year).¹⁸ However, this grant does allow parolees the right to apply for work authorization for the duration of their parole.¹⁹ HP is rarely granted.²⁰ In instances where it is granted, it is used for emergencies such as reuniting sick family members, attending funerals, and testifying in lawsuits.²¹ While parolees are within their designated duration of stay, they are eligible to adjust their status through other avenues.²² The U.S. government has full discretion to approve or deny HP claims.²³

Historically, the U.S. government has granted HP in many instances following humanitarian crises brought on by war.²⁴ The U.S. government implemented Operation Safe Haven in 1957 to evacuate over 27,000 at-risk Hungarians after the Hungarian Revolution.²⁵ Later, the U.S. government implemented Operation New Life to evacuate 140,000 at-risk migrants at the conclusion of the Vietnamese War.²⁶ After the fall of the governments of South Vietnam and Khmer Republic (also known as Cambodia) in April

¹⁴ *Immigration and Nationality Act*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://perma.cc/ZBC8-UHEX> (last visited May 29, 2023).

¹⁵ 8 U.S.C.A. § 1182 (2021).

¹⁶ *Humanitarian Parole*, *supra* note 13.

¹⁷ ANDORRA BRUNO & CONG. RSCH. SERV., R46570: IMMIGRATION PAROLE 5–6 (2020), <https://perma.cc/8K6E-KT3A>.

¹⁸ See Jill Goldenziel, *Humanitarian Parole Can Save Afghan Allies. The U.S. Should Let Them Use It*, FORBES (Sept. 1, 2021, 1:48 PM EDT), <https://perma.cc/8LQ8-RQVM>.

¹⁹ BRUNO & CONG. RSCH. SERV., *supra* note 17, at 1.

²⁰ See Philip Marcelo & Amy Taxin, *Hundreds of Afghans Denied Humanitarian Entry into US*, U.S. NEWS & WORLD REP. (Dec. 30, 2021, 7:39 AM), <https://perma.cc/K77H-9LHZ>.

²¹ *How to Get into the U.S. with Humanitarian Parole*, SHOUSE CAL. L. GRP., <https://perma.cc/2B6G-84WF> (last visited May 29, 2023).

²² See Goldenziel, *supra* note 18.

²³ See BRUNO & CONG. RSCH. SERV., *supra* note 17, at 1.

²⁴ See Letter from #AfghanEvac Coal. et al., to Alejandro N. Mayorkas, Sec’y of Homeland Sec., & Mendoza Jaddou, Dir., U.S. Citizenship & Immigr. Servs., *Request for Creation of the Afghan Parole Program, a Designated Parole Program for At-Risk Afghans* 1–2 (Feb. 15, 2022), <https://perma.cc/6P9N-4BXA> [hereinafter #AfghanEvac Letter].

²⁵ *Id.*

²⁶ *Id.*

1975, the United States immediately paroled evacuees within U.S. borders.²⁷ From 1960 to 1961, the United States granted parole to “hundreds of thousands” of Cubans as a safety measure against Fidel Castro’s rule.²⁸ In the 1980’s, 100,000 Cubans were paroled into the United States for similar reasons, while Haitians were only paroled in at 1,000 monthly.²⁹ After the 2010 earthquake, the United States established the Special Humanitarian Parole Program for Haitian Orphans to parole orphans being adopted by families in the United States.³⁰ In 2014, the Haitian Family Reunification Parole Program granted “eligible U.S. citizens and lawful permanent residents” (“LPR”) the chance to parole in members of their family located in Haiti.³¹ Most recently, in 2021, the Biden administration utilized HP to bring “tens of thousands” of migrants into the United States following the evacuation of at-risk Afghans in Operation Allies Welcome.³²

2. Temporary Protected Status

The Immigration Act of 1990 created Temporary Protected Status (“TPS”) as a method of offering relief to individuals already living in the United States whose countries suffered from humanitarian disasters.³³ A country is designated for TPS by the Secretary of the Department of Homeland Security (“DHS”) “due to conditions in the country that temporarily prevent the country’s nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately.”³⁴ TPS is granted due to either “ongoing armed conflict,” “environmental disaster,” or “other extraordinary and temporary conditions” that would make it difficult for nationals to return safely to their home countries.³⁵ Countries may receive TPS designation due to one or more

²⁷ COMPROLLER GEN. OF THE U.S., EVACUATION AND TEMPORARY CARE AFFORDED INDOCHINESE REFUGEES: OPERATION NEW LIFE, NO. 76-63, at 6 (1976), <https://perma.cc/Y3CF-5G35> [hereinafter OPERATION NEW LIFE].

²⁸ Joshua Rodriguez, *Explainer: What We Can Learn from Prior Adjustment Acts and What They Mean for Afghan Resettlement*, NAT’L IMMIGR. F. (Nov. 10, 2021), <https://perma.cc/6JBG-QRHY>.

²⁹ See Carlos Ortiz Miranda, *Haiti and the United States During the 1980s and 1990s: Refugees, Immigration, and Foreign Policy*, 31 SAN DIEGO L. REV. 673, 681 (1995).

³⁰ Whitney A. Reitz, *Reflections on the Special Humanitarian Parole Program for Haitian Orphans*, 55 N.Y. L. SCH. L. REV. 791, 792-93 (2011).

³¹ *The Haitian Family Reunification Parole (HFRP) Program*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://perma.cc/A6NQ-ETW3> (last visited May 29, 2023).

³² Rebekah Wolf, *Concerns Grow over Denials of Afghan Humanitarian Parole Requests*, IMMIGR. IMPACT (Jan. 7, 2022), <https://perma.cc/49Z2-2B8U>.

³³ See Diana Roy & Claire Klobucista, *What is Temporary Protected Status?*, COUNCIL ON FOREIGN RELS., <https://perma.cc/3VF9-LJEM> (last updated Jan. 4, 2023, 4:03 PM EST).

³⁴ *Temporary Protected Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://perma.cc/85EA-BK9P> (last visited May 29, 2023).

³⁵ Roy & Klobucista, *supra* note 33.

of these circumstances.³⁶

These grants come in periods of six to eighteen months and may be renewed at the discretion of the Secretary of DHS if the country continues to “meet the conditions for designation.”³⁷ Additionally, the designation is accompanied by a decision that, on a specific date, those who apply for this protection need to prove “actual physical presence in the United States for the entire period specified in the regulations.”³⁸ This designation date for continuous physical presence may remain the same even if TPS is extended, or the DHS Secretary can change it to a newer date closer to the most recent designation, known as “redesignation,” in which nationals must prove continuous physical presence.³⁹ Altogether, TPS may be designated (meaning the initial time a country receives TPS), extended (meaning a country’s TPS designation is drawn out further so individuals who arrived on or before the original designated time can continue to remain in the United States, but new individuals who arrived after the original date of designation are not eligible), and redesignated (meaning the initial arrival date of the designation can be updated to a more recent date so individuals who arrived after the initial date of designation may apply).⁴⁰ During the designated period, a TPS recipient (who is presently undocumented) is not removable, is eligible for employment authorization, and may receive travel authorization.⁴¹ A grant of TPS itself is not a pathway to lawful immigration status.⁴² However, these individuals may apply for other pathways to lawful immigration status if they are eligible.⁴³

To date, the United States has designated nineteen TPS countries, and thirteen countries are currently under TPS designation including: Burma, Venezuela, Syria, Ukraine, Afghanistan, and Haiti.⁴⁴ Burma is designated as a TPS country due to the “extraordinary and temporary conditions” that prevent nationals from returning home safely because of the political crisis and human rights abuses occurring in the country.⁴⁵ Venezuela’s

³⁶ JILL H. WILSON & CONG. RSCH. SERV., RS20844: TEMPORARY PROTECTED STATUS AND DEFERRED ENFORCED DEPARTURE 2 (2022), <https://perma.cc/G8M3-FUAY>.

³⁷ *Id.* at 3.

³⁸ AM. IMMIGR. LAW. ASS’N, TEMPORARY PROTECTED STATUS (TPS) QUESTIONS AND ANSWERS (2021), <https://perma.cc/5CX8-G2SB>.

³⁹ WILSON & CONG. RSCH. SERV., *supra* note 36, at 3.

⁴⁰ WILSON & CONG. RSCH. SERV., *supra* note 36, at 3.

⁴¹ WILSON & CONG. RSCH. SERV., *supra* note 36, at 3–4.

⁴² *Temporary Protected Status*, *supra* note 34.

⁴³ See Ilona Bray, *Supreme Court Says TPS Does Not Turn an Unlawful Entry into a Lawful One for Purposes of Adjusting Status*, NOLLO (June 8, 2021), <https://perma.cc/8RYK-D5LQ> (explaining that one pathway for TPS holders is applying for asylum or permanent resident status).

⁴⁴ See Roy & Klobucista, *supra* note 33.

⁴⁵ Designation of Burma (Myanmar) for Temporary Protected Status, 86 Fed. Reg. 28,132, 28,135-01 (May 25, 2021).

designation is due to “extraordinary and temporary conditions” arising out of the humanitarian emergency in the country that is causing economic, human rights, and health crises.⁴⁶ Syria’s designation is extended due to “extraordinary and temporary conditions” and “ongoing armed conflict” caused by the Syrian civil war which exacerbated the humanitarian crisis in the country.⁴⁷ Haiti’s designation is extended due to the “extraordinary and temporary conditions” the country is facing as a result of political violence and ongoing human rights injustices.⁴⁸ Afghanistan’s designation comes as a result of “armed conflict” and “extraordinary and temporary conditions” the country is facing because of the Taliban’s rise to power.⁴⁹

3. Refugee and Asylum Status

The United Nations 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees ensure the protection of refugees.⁵⁰ Within this convention, the principle of non-refoulement states that “a refugee should not be returned to a country where they face serious threats to their life or freedom.”⁵¹ A refugee is defined as one who “is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”⁵² Being admitted as a refugee in the United States grants an individual a pathway to permanent resident status, which may be applied for one year after being admitted.⁵³

The Universal Declaration of Human Rights memorialized asylum on December 10, 1948, stating “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution.”⁵⁴ In the United States “any

⁴⁶ Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure, 86 Fed. Reg. 13,574, 13,575-01 (Mar. 9, 2021).

⁴⁷ Extension and Redesignation of Syria for Temporary Protected Status, 86 Fed. Reg. 14,946, 14,947-01 (Mar. 19, 2021).

⁴⁸ Designation of Haiti for Temporary Protected Status, 86 Fed. Reg. 41,863, 41,864-01 (Aug. 3, 2021).

⁴⁹ *Secretary Mayorkas Designates Afghanistan for Temporary Protected Status*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Mar. 16, 2022), <https://perma.cc/FL4H-52P9> [hereinafter *Mayorkas Designates Afghanistan*].

⁵⁰ See generally *An Overview of U.S. Refugee Law and Policy*, AM. IMMIGR. COUNCIL, <https://perma.cc/A8BK-WM6A> (last modified Oct. 22, 2022).

⁵¹ *The 1951 Refugee Convention*, UNHCR, <https://perma.cc/C7KG-7VZ2> (last visited May 29, 2023).

⁵² 8 U.S.C.S. § 1101 (2022).

⁵³ See U.S. CITIZENSHIP & IMMIGR. SERVS., USCIS WELCOMES REFUGEES AND ASYLEES 3 (Nov. 2019), <https://perma.cc/CK8M-6GDG> [hereinafter USCIS WELCOMES].

⁵⁴ Universal Declaration of Human Rights, Dec. 10, 1948, 217 A (III) U.N.T.S. 3; see AM. IMMIGR. COUNCIL, ASYLUM IN THE UNITED STATES 1 (2022), <https://perma.cc/9QCQ-TNCQ>

[noncitizen]⁵⁵ who is physically present in the United States or who arrives in the United States . . . may apply for asylum.”⁵⁶ Asylum seekers have the burden of proving that they meet the definition of a refugee and that they have a “well-founded fear” of facing persecution in their country.⁵⁷ Being granted asylum in the United States presents an individual a pathway to permanent resident status, which may be applied for one year after being granted asylee status.⁵⁸ Both refugee and asylum seekers share the experience of leaving their countries due to fear of persecution or serious human rights violations.⁵⁹ However, the most important distinction between the two is that refugees are currently outside of their country, while asylees are present in the country in which they are seeking asylum.⁶⁰

4. Adjustment of Status

A nonimmigrant may apply to adjust to LPR status “if (1) the [noncitizen]⁶¹ makes an application for such adjustment, (2) the [noncitizen]⁶² is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.”⁶³ The INA lists several examples that would make an individual inadmissible including: if an individual has a conviction for a crime involving moral turpitude, if an individual has multiple criminal convictions for which the aggregate sentences to confinement were five years or more, or if an individual has committed terrorist activities.⁶⁴ Generally, an applicant must have an approved immigrant petition to apply for LPR status.⁶⁵ Common examples of approved immigrant petitions are through sponsorship by an LPR or a U.S. citizen family member or spouse, certain employment

[hereinafter ASYLUM IN THE U.S.].

⁵⁵ See generally Hamed Aleaziz, “Illegal Alien” Will No Longer Be Used in Many US Government Communications, BUZZFEED NEWS <https://perma.cc/WJH3-MU5N> (last updated Feb. 16, 2021, 7:20 PM) (explaining that President Biden has officially stopped the use of the word “alien” to describe noncitizens; this Note will follow suit and not use this dehumanizing word).

⁵⁶ 8 U.S.C.S. § 1158 (2021).

⁵⁷ ASYLUM IN THE U.S., *supra* note 54, at 1.

⁵⁸ See USCIS WELCOMES, *supra* note 53, at 3.

⁵⁹ *Refugees, Asylum-Seekers and Migrants*, AMNESTY INT’L, <https://perma.cc/7ZRB-F2A5> (last visited May 29, 2023).

⁶⁰ See *id.*

⁶¹ See generally Aleaziz, *supra* note 55 (explaining that President Biden has officially stopped the use of the word “alien” to describe noncitizens; this Note will follow suit and not use this dehumanizing word).

⁶² See generally Aleaziz, *supra* note 55.

⁶³ 8 U.S.C.S. § 1255(a) (2022).

⁶⁴ 8 U.S.C.S. § 1182 (2022).

⁶⁵ See *Adjustment of Status (AOS) Before USCIS Flow Chart (I485)*, NAT’L IMMIGR. JUST. CTR, <https://perma.cc/X6A9-LTLU> (last visited May 29, 2023).

categories, a Special Immigrant status (such as if you are a juvenile and granted protection due to abuse, abandonment, or neglect), and asylum status.⁶⁶

There is an alternate method of providing a pathway to LPR status for those who do not have any immigrant petition available to them.⁶⁷ This method is only utilized during times of conflict or humanitarian emergencies.⁶⁸ It is a piece of legislation that must be passed by Congress, known as an Adjustment Act.⁶⁹ The United States has passed several Adjustment Acts including the Cuban Adjustment Act, the post-Vietnam War Adjustment Act, and several Iraqi Adjustment Acts.⁷⁰ The Cuban Adjustment Act gave an avenue to Cuban nationals who entered the United States via HP after fleeing Fidel Castro's regime.⁷¹ If they qualified, Cuban nationals could adjust to LPR status after one year in the United States.⁷² The Cuban Adjustment Act amounted to 1.2 million Cubans obtaining LPR status.⁷³ The Haitian Refugee Immigration Fairness Act allowed eligible Haitian parolees to gain LPR status.⁷⁴ Congress passed several Adjustment Acts to address the number of refugees paroled into the United States after the Vietnam War.⁷⁵ Over 150,000 parolees obtained LPR status via this avenue.⁷⁶ Most recently, Congress passed multiple Adjustment Acts following the U.S. military occupation in Iraq which gave Iraqi asylum seekers an avenue toward LPR status if they met certain requirements.⁷⁷ This program allowed over 10,000 migrants to receive LPR status.⁷⁸

B. *Defining "Humanitarian Crisis" and "Crisis Migrant"*

A humanitarian crisis is defined as "any situation in which there is a widespread threat to life, physical safety, health or subsistence that is beyond the coping capacity of individuals and the communities in which

⁶⁶ See generally *Green Card Eligibility Categories*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://perma.cc/H6DA-7998> (last visited May 29, 2023) (explaining different ways one may obtain a green card in the United States).

⁶⁷ Rodriguez, *supra* note 28.

⁶⁸ Rodriguez, *supra* note 28.

⁶⁹ See generally Rodriguez, *supra* note 28.

⁷⁰ Rodriguez, *supra* note 28.

⁷¹ Rodriguez, *supra* note 28.

⁷² Rodriguez, *supra* note 28.

⁷³ Rodriguez, *supra* note 28.

⁷⁴ *Green Card for a Haitian Refugee*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://perma.cc/PPG3-N8EF> (last visited May 29, 2023).

⁷⁵ Rodriguez, *supra* note 28.

⁷⁶ See Rodriguez, *supra* note 28.

⁷⁷ Rodriguez, *supra* note 28.

⁷⁸ See Rodriguez, *supra* note 28.

they reside.”⁷⁹ Many see a humanitarian crisis as a sudden emergency that arises out of complete normalcy and needs an urgent response.⁸⁰ Although certain events or processes may be the immediate cause of these crises, they are often the result of core problems that have developed in countries due to poor governance, levels of poverty, human rights abuses, environmental challenges, and more.⁸¹ Due to the urgency of humanitarian crises, they cause “a state of affairs in which a decisive change for better or worse is imminent.”⁸² This can often lead to what is known as crisis migration.⁸³

Crisis migration is defined as “a response to a complex combination of social, political, economic, and environmental factors, which may be *triggered* by an extreme event, but not caused by it.”⁸⁴ This migration occurs because individuals are forced to leave their home country, as it is no longer sustainable to stay.⁸⁵ Out of crisis migration comes those who are known as “crisis migrants.”⁸⁶ Crisis migrants are “those who move and those who become trapped and are in need of relocation in the context of humanitarian crises.”⁸⁷ Oftentimes, the terms “migrant,” “asylum-seeker,” and “refugee” are used interchangeably.⁸⁸ The major difference between these terms is that refugees have fled their home countries due to a fear of persecution and have a right to international protection; asylum-seekers request protection while physically being in another country due to fear of persecution; and migrants are a catch-all phrase used to describe those that leave their home countries under positive or negative circumstances.⁸⁹ While migrants may not fit the legal definition of a refugee, they may nevertheless be fleeing their home countries due to fear of danger and should therefore be protected.⁹⁰

C. Countries That Have Suffered Recent Humanitarian Crises: Haiti

1. Overview

The country of Haiti, situated in the Caribbean, has a history of exploitation beginning with its discovery by Christopher Columbus and continuing through colonization by the French in the seventeenth century.⁹¹

⁷⁹ MARTIN ET AL., *supra* note 1, at 29.

⁸⁰ See MARTIN ET AL., *supra* note 1, at 29.

⁸¹ See MARTIN ET AL., *supra* note 1, at 5.

⁸² MARTIN ET AL., *supra* note 1, at 30.

⁸³ See MARTIN ET AL., *supra* note 1, at 30.

⁸⁴ MARTIN ET AL., *supra* note 1, at 34 (emphasis in original).

⁸⁵ See MARTIN ET AL., *supra* note 1, at 30, 34.

⁸⁶ See MARTIN ET AL., *supra* note 1, at 30.

⁸⁷ MARTIN ET AL., *supra* note 1, at 12.

⁸⁸ *Refugees, Asylum-Seekers and Migrants*, *supra* note 59.

⁸⁹ See *Refugees, Asylum-Seekers and Migrants*, *supra* note 59.

⁹⁰ See *Refugees, Asylum-Seekers and Migrants*, *supra* note 59.

⁹¹ See *Haiti: A Brief History of a Complex Nation*, INST. OF HAITIAN STUD.,

Although once known as the Pearl of the Antilles as a call to the wealth Haiti produced, the hundreds of thousands of slaves who created this wealth could not appreciate it.⁹² In 1804, after years of resistance against the French, the Haitians seized their independence as a result of a slave rebellion.⁹³ This independence alarmed slave-owning countries everywhere, so much so that Haiti had to sign an agreement to pay the French twenty-one billion dollars in reparations, an obligation which haunted the country for 122 years.⁹⁴ In order to pay off this debt, Haiti took loans at high interest rates, which completely ruined the Haitian economy.⁹⁵ Furthermore, after the Haitian Revolution which ousted the French, the United States did not formally recognize Haitian independence and instead tried to take over Haiti itself.⁹⁶ This sent the state of the Haitian government into turmoil as it saw seven presidents through four years, in addition to the United States stealing its gold reserve.⁹⁷ Then, the United States occupied Haiti from 1915 to 1934 in a failed attempt to fix Haiti's government and force the country to pay back its debt.⁹⁸ Since then, Haiti has gone through many political regimes that have continued to ruin the country.⁹⁹

2. Environmental Challenges

Haiti has faced several environmental challenges through the years.¹⁰⁰ The country is vulnerable to earthquakes as it "sits on a fault line between huge tectonic plates, big pieces of the Earth's crust that slide past each other over time."¹⁰¹ This is harmful as the country is built to survive "hurricanes, not earthquakes."¹⁰² Haiti has suffered severe consequences as a result of a multitude of natural disasters.¹⁰³ This is due to a variety of factors including

<https://perma.cc/5U9C-6VGG> (last visited May 29, 2023).

⁹²Jon Henley, *Haiti: A Long Descent to Hell*, *GUARDIAN* (Jan. 14, 2010, 14:00 EST), <https://perma.cc/3CF2-3J3X>.

⁹³*Haiti: A Brief History of a Complex Nation*, *supra* note 91.

⁹⁴Dan Sperling, *In 1825, Haiti Paid France \$21 Billion to Preserve Its Independence -- Time for France to Pay It Back*, *FORBES* (Dec. 6, 2017, 6:10 PM EST), <https://perma.cc/UX2B-CUH2>.

⁹⁵See Greg Rosalsky, *'The Greatest Heist in History': How Haiti Was Forced to Pay Reparations for Freedom*, *NPR* (Oct. 5, 2021, 10:25 AM ET), <https://perma.cc/K5F8-LC88>.

⁹⁶Chris Cameron, *As U.S. Navigates Crisis in Haiti, a Bloody History Looms Large*, *N.Y. TIMES* (Dec. 19, 2021), <https://perma.cc/D5KN-AEP6>.

⁹⁷*Id.*

⁹⁸*Id.*

⁹⁹See generally *id.* (explaining the history of Haiti's politics from the Duvalier dynasty to Jovenel Moïse).

¹⁰⁰See generally Jaclyn Diaz, *Why Earthquakes in Haiti Are So Catastrophic*, *NPR* (Aug. 16, 2021, 10:00 AM ET), <https://perma.cc/2EEJ-XELV> (presenting numerous examples of past earthquakes in Haiti).

¹⁰¹*Id.*

¹⁰²See *id.*

¹⁰³Rocio Cara Labrador & Diana Roy, *Haiti's Troubled Path to Development*, *COUNCIL ON*

deforestation, bad housing infrastructure, and poor planning.¹⁰⁴ In 2010, a 7.0 magnitude earthquake devastated Haiti which killed 220,000 nationals and expelled 1.5 million Haitians.¹⁰⁵ From 2015 to 2017, a drought impacted the nation which led to 70% of a total loss of crops.¹⁰⁶ Additionally, in 2016, Hurricane Matthew struck Haiti which completely obliterated the infrastructure, housing, and livestock in the country.¹⁰⁷

3. Current Events

In the summer of 2021, a combination of political and environmental events led Haiti to a state of turmoil.¹⁰⁸ On July 7, 2021, the political unrest and gang violence in Haiti escalated due to the assassination of President Jovenel Moïse.¹⁰⁹ On August 14, 2021, a 7.2 magnitude earthquake hit the southwest region of Haiti, causing damage similar to the 2010 earthquake.¹¹⁰ Two days later, on August 16, Tropical Depression Grace struck.¹¹¹ This affected more than 800,000 people in Haiti, expelled 30,000, and left 650,000 in need of humanitarian support.¹¹² In response to these challenges, a minimum of 14,000 Haitians attempted to migrate to the United States to seek refuge.¹¹³

During the Trump administration, the United States began utilizing Title 42 as a method of ousting migrants at the border without considering their asylum claims.¹¹⁴ The 1944 Public Health Service Act established Title 42 to “ban people and goods from entering the United States when doing so is required in the interest of public health.”¹¹⁵ Opponents to this practice

FOREIGN RELS., <https://perma.cc/2846-UX5Z> (last updated Sept. 9, 2022, 4:37 PM EST).

¹⁰⁴ See Diaz, *supra* note 100.

¹⁰⁵ Labrador & Roy, *supra* note 103.

¹⁰⁶ Labrador & Roy, *supra* note 103.

¹⁰⁷ Labrador & Roy, *supra* note 103.

¹⁰⁸ See generally *How Haiti Is Weathering Two Natural Disasters at Once*, NPR (Aug. 18, 2021, 5:00 PM ET), <https://perma.cc/4T5D-5A7B> (outlining the presidential assassination, earthquake, and tropical storm that subsequently hit Haiti).

¹⁰⁹ Natalie Kitroeff & Anatoly Kurmanaev, *How the Assassination of Haiti’s President Follows Years of Strife and Gridlock*, N.Y. TIMES, <https://perma.cc/5ZRM-RKYZ> (last updated July 10, 2021).

¹¹⁰ Diaz, *supra* note 100.

¹¹¹ The Associated Press, *A Tropical Storm Is Drenching Earthquake-Stricken Haiti*, NPR (Aug. 17, 2021, 6:10 AM ET), <https://perma.cc/E9J5-DBCT>.

¹¹² *Stop US Deportations and Abuse Against Haitians on the Move: An Urgent Step Towards Creating Just Policies for Haitians*, AMNESTY INT’L (Dec. 15, 2021), <https://perma.cc/246S-2Q3G> [hereinafter *Stop US Deportations*].

¹¹³ See James Dobbins et al., *How Hope, Fear and Misinformation Led Thousands of Haitians to the U.S. Border*, N.Y. TIMES, <https://perma.cc/J7QH-YUAN> (last updated Oct. 5, 2021).

¹¹⁴ See Ryan Bort, *Biden Channels Stephen Miller to Deport Haitian Asylum Seekers*, ROLLING STONE (Sept. 21, 2021), <https://perma.cc/LM8Z-YVGA>.

¹¹⁵ See Tom K. Wong & Nicole Prchal Svajlenka, *The Title 42 Expulsion Policy Does Nothing to*

challenged it in different lawsuits and argued it is not being utilized for public health concerns, but rather in a racist way to expel migrants from certain countries.¹¹⁶ In the summer of 2021, Haitian migrants traveled to the border in Del Rio, Texas hoping to apply for asylum.¹¹⁷ Border Patrol officers confronted them with violence on horseback and pushed these migrants back into Mexico with force.¹¹⁸ As the Biden administration began deportation flights of all Haitian migrants back to Haiti, regardless of whether they actually resided in Haiti before attempting to migrate to the United States, many Haitians did not have the chance to apply for asylum.¹¹⁹ Title 42 has had a disproportionate impact on Haitian migrants, with over 15,000 being sent on flights back to Haiti in 2021.¹²⁰

The United States has a history of designating Haiti for TPS.¹²¹ The Trump administration rescinded TPS from Haitians in 2017, giving them until 2019 to leave the United States or face deportation.¹²² When appointed by the Biden administration, DHS Secretary Alejandro Mayorkas redesignated Haiti for TPS, allowing any Haitian who can prove to have “continuously resided in the United States since July 29, 2021, and who have been continuously physically present in the United States since August 3, 2021” this temporary protection.¹²³

Prevent the Spread of COVID-19, CTR. FOR AM. PROGRESS (May 10, 2022), <https://perma.cc/H7GJ-3BVV>.

¹¹⁶ See Uriel J. García, *U.S. Supreme Court Cancels Arguments over Title 42, the Pandemic-Era Policy to Quickly Turn Away Migrants*, TEX. TRIB. (Feb. 16, 2023, 5:00 PM CST), <https://perma.cc/D2WS-KFUP> (indicating that “Title 42 has been the subject of various lawsuits” due to being used as a racist tactic to prevent immigration rather than what it is intended for); *More Than 40 Human and Civil Rights Leaders: Ongoing Mistreatment and Expulsions of Haitians and Asylum Seekers Will Stain Biden’s Legacy*, NAT. IMMIGRANT JUST. CTR. (Nov. 17, 2021), <https://perma.cc/59X9-628B> (delineating “racial justice” contentions against the use of Title 42).

¹¹⁷ Dobbins et al., *supra* note 113.

¹¹⁸ See Bort, *supra* note 114.

¹¹⁹ Camilo Montoya-Galvez, *U.S. Expels Nearly 4,000 Haitians in 9 Days as Part of Deportation Blitz*, CBS NEWS (Sept. 27, 2021, 9:28 PM), <https://perma.cc/NE77-DYLF>.

¹²⁰ See Bort, *supra* note 114.

¹²¹ See generally Sophia Asare, Comment, “*This Land Cannot Die*”: U.S. Involvement in the Rebuilding Haiti, 33 HOUS. J. INT’L L. 177, 179–80 (2010) (explaining that the Obama administration issued TPS to Haitians in 2010).

¹²² See Sarah E. Baranik de Alarcón, David H. Secor & Norma Fuentes-Mayorga, “*We Are Asking Why You Treat Us This Way. Is It Because We Are Negroes?*” A Reparations-Based Approach to Remediating the Trump Administration’s Cancellation of TPS Protections for Haitians, 26 MICH. J. RACE & L. 1, 2 (2020).

¹²³ Designation of Haiti for Temporary Protected Status, 86 Fed. Reg. 41,863, 41,863 (Aug. 3, 2021).

D. *Countries That Have Suffered Recent Humanitarian Crises: Afghanistan*

1. Overview

The landlocked country of Afghanistan has suffered for centuries through war and the struggle for independence.¹²⁴ It has warded off many invasion attempts by multiple countries, such as Great Britain and the Soviet Union, throughout the years.¹²⁵ During the Soviet Union's attempt to invade the country, Osama Bin Laden created Al-Qaeda.¹²⁶ The Taliban emerged from this resistance to the Soviet Union's invasion, gained popularity for pledging to stabilize Afghanistan, and eventually seized control of the government.¹²⁷ After gaining control of the government, the Taliban welcomed Al-Qaeda into the country and formed strong ties with them.¹²⁸ In 1999, the UN officially recognized Al-Qaeda and the Taliban as terrorist organizations.¹²⁹

On September 11, 2001, Al-Qaeda attacked the United States, killing thousands and sparking President George W. Bush to declare the "war on terror" in Afghanistan on October 7, 2001.¹³⁰ Post 9/11, the United States overhauled its immigration policies because members of Al-Qaeda had easily secured visas before the attacks due to low vetting for certain visas.¹³¹ The United States created the Department of Homeland Security, Immigration and Customs Enforcement ("ICE"), and Customs and Border Protection ("CBP") to ensure the country strictly followed immigration laws.¹³² Additionally, a massive upheaval of national security occurred, as the United States introduced enhanced interrogation techniques along with the President's Surveillance Program and the Patriot Act.¹³³ These changes increased Islamophobia and anti-immigrant sentiments in the United States.¹³⁴

¹²⁴ See Mónica Serrano, Christine Fellenz & Lawson Parker, *How Centuries of Strife Shaped Modern Afghanistan*, NAT'L GEOGRAPHIC (Aug. 16, 2021), <https://perma.cc/3XG5-NBP2>.

¹²⁵ *See id.*

¹²⁶ See CLAYTON THOMAS & CONG. RSCH. SERV., IF11854: AL QAEDA: BACKGROUND, CURRENT STATUS, AND U.S. POLICY 1 (2022), <https://perma.cc/LB6H-ZFF6>.

¹²⁷ See Lindsay Maizland, *The Taliban in Afghanistan*, COUNCIL ON FOREIGN REL., <https://perma.cc/4B6H-VKVB> (last updated Jan. 19, 2023, 10:45 AM EST).

¹²⁸ See Saurav Sarkar, *The Taliban and Al-Qaeda: Enduring Partnership or Liability?*, THE DIPLOMAT (June 16, 2020), <https://perma.cc/G4HK-G4LE>.

¹²⁹ *The U.S. War in Afghanistan: 1990-2021*, COUNCIL ON FOREIGN REL., <https://perma.cc/W272-3S6L> (last visited May 29, 2023).

¹³⁰ *Id.*

¹³¹ See Ali Soufan, *America Played into Al-Qaeda's Hands*, THE ATL. (Sept. 11, 2021), <https://perma.cc/B4HW-7Y2C>.

¹³² Madeleine Carlisle, *How 9/11 Radically Expanded the Power of the U.S. Government*, TIME (Sept. 11, 2021, 7:00 AM EDT), <https://perma.cc/K2ZB-FDKP>.

¹³³ *Id.*

¹³⁴ *See id.*

2. Current Events

After two decades of war in Afghanistan, on November 17, 2020, the United States announced a withdrawal of armed forces, followed by President Joe Biden's decision on April 14, 2021, to completely withdraw by September 11, 2021.¹³⁵ Trying to get ahead of the chaos, the United States expanded the Special Immigrant Visa ("SIV") program.¹³⁶ The United States later followed by expanding the Priority 2 Visa ("P2") program.¹³⁷ SIVs immediately had procedural delays upon introduction in 2006.¹³⁸ Furthermore, these visas continue to be limiting, as those that qualify must have worked for the U.S. government in some capacity.¹³⁹

The tide changed in Afghanistan on August 15, 2021, when the Taliban once again overtook Kabul, the capital, after President Ghani fled the country.¹⁴⁰ A scene of pure chaos ensued as tens of thousands of U.S. citizens, LPRs, and Afghan nationals scrambled to board planes out of the country, fearing for their lives at the hands of the Taliban.¹⁴¹ Over 60,000 Afghan allies, meaning those who worked for the U.S. government in some capacity, could not secure SIV and P2 visas and are currently still in Afghanistan.¹⁴²

¹³⁵ See generally *The U.S. War in Afghanistan: 1990-2021*, *supra* note 129 (outlining major events that occurred in the "war on terrorism," including the capture of Osama Bin Laden during the Obama administration).

¹³⁶ See generally *Fact Sheet: Overview of the Special Immigrant Visa Programs*, NAT'L IMMIGR. F. (June 22, 2021), <https://perma.cc/WV82-B86A> (stating those eligible for SIV visas are Afghans "translators or interpreters who have worked with U.S. military forces" or "any other Afghan national who was employed by or on behalf of the United States government in the region").

¹³⁷ See generally Jennifer Hansler, Nicole Gaouette & Michael Conte, *Biden Administration Expands Access To Refugee Program for Afghans Who Worked with US*, CNN, <https://perma.cc/A9BA-HMJG> (last updated Aug. 2, 2021, 5:44 PM EDT) (explaining that those eligible for P2 visas are Afghans who "'work or worked as employees of contractors, locally-employed staff, interpreters/translators' for the US government, US or NATO forces, those 'who work or worked for a U.S. government-funded program or project in Afghanistan supported through a U.S. government grant or cooperative agreement,' and those 'who are or were employed in Afghanistan by a U.S.-based media organization or non-governmental organization'").

¹³⁸ See Ryan C. Crocker & Philip M. Caruso, *Our Allies Deserve Better Than Starvation and a Life on the Run*, N.Y. TIMES (Feb. 17, 2022), <https://perma.cc/3CDR-UPUR>.

¹³⁹ See generally Danilo Zak, *Fact Sheet: Pathways To Protection for Afghans at Risk*, NAT'L IMMIGR. F. (Sept. 1, 2021), <https://perma.cc/85XT-QKAU> (explaining those who qualify for an SIV visa are "interpreters, embassy workers, and others who have directly supported U.S. military efforts," while those who qualify for a P2 visa are "vulnerable Afghans who worked for U.S. military contractors or U.S.-based non-governmental organizations (NGOs) but who do not qualify for SIV status").

¹⁴⁰ *The U.S. War in Afghanistan: 1990-2021*, *supra* note 129.

¹⁴¹ See Michael D. Shear, Lara Jakes & Eileen Sullivan, *Inside the Afghan Evacuation: Rogue Flights, Crowded Tents, Hope and Chaos*, N.Y. TIMES, <https://perma.cc/96GQ-3DYC> (last updated Nov. 12, 2021).

¹⁴² See Crocker & Caruso, *supra* note 138.

Realizing there needed to be another way to process the 125,000 Afghans evacuated, most of whom were recognized as “vulnerable Afghans” who did not qualify for any other visa into the United States, the Biden administration began utilizing HP.¹⁴³ After evacuating migrants into transit sites known as “lily pads,” U.S. officials began screening and processing Afghan nationals, paroling them into the United States if they passed safety screenings.¹⁴⁴ Around 82,015 Afghans in total evacuated, with 70,192 entering the United States through HP.¹⁴⁵ The United States officially pulled troops from Afghanistan on August 30, 2021.¹⁴⁶ While tens of thousands evacuated, 78,000 allies and high-risk individuals still remain in Afghanistan.¹⁴⁷ On March 16, 2022, the Biden administration designated Afghanistan for Temporary Protected Status.¹⁴⁸

II. Importance

A. *The United States Must Establish Short- and Long-Term Solutions To Immigration Policy During Times of Humanitarian Emergency Because Such Times Are Becoming More Frequent*

An estimated 274 million migrants across the world require humanitarian aid.¹⁴⁹ An estimated 68 million migrants have escaped their home countries due to conditions of war and fear of persecution.¹⁵⁰ An estimated 14 million migrants are forced out of their home countries due to drastic weather and climate change.¹⁵¹ An estimated 690 million migrants experience hunger.¹⁵² Humanitarian emergencies are increasing around the world as numerous conflicts lead to war and the effects of climate change displace millions of people.¹⁵³

Although this Note will focus on the humanitarian emergencies in Haiti and Afghanistan, many countries face similar crises.¹⁵⁴ Most recently, the

¹⁴³ See Nick Miroff, *For Afghan Evacuees Arriving To U.S., a Tenuous Legal Status and Little Financial Support*, WASH. POST (Sept. 1, 2021, 10:05 PM EDT), <https://perma.cc/2BTB-44WJ>.

¹⁴⁴ See *id.*

¹⁴⁵ See DEP’T OF HOMELAND SEC., OPERATION ALLIES WELCOME AFGHAN EVACUEE REPORT 2–7 (2021), <https://perma.cc/ZM52-8PFE>.

¹⁴⁶ Zucchini, *supra* note 8.

¹⁴⁷ De Luce, *supra* note 12.

¹⁴⁸ Mayorkas Designates Afghanistan, *supra* note 49.

¹⁴⁹ *Global Humanitarian Overview 2023*, UNITED NATIONS OFF. FOR THE COORDINATION OF HUMANITARIAN AFFS., <https://perma.cc/5D8E-4HG8> (last visited May 29, 2023).

¹⁵⁰ *Conflicts and Disasters*, OXFAM INT’L, <https://perma.cc/4ZPF-744P> (last visited May 29, 2023).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ See *id.*

¹⁵⁴ See *The Top 10 Crises the World Can’t Ignore in 2022*, INT’L RESCUE COMM., <https://perma.cc/KA64-8RNK> (last updated July 18, 2022).

humanitarian crisis in Ukraine is gaining nationwide attention.¹⁵⁵ As it is unclear what will come from Russia's attack on Ukraine, the United States cannot continue to ignore that humanitarian emergencies cause an increase in immigration.¹⁵⁶ In fact, the United States developed an immigration plan for at-risk Ukrainian migrants after receiving months of pressure.¹⁵⁷ Therefore, there must be a solid plan in place for how the country will address humanitarian emergencies through immigration policy in the short- and long-term.¹⁵⁸ When President Biden took office, he made numerous promises for changes in immigration policy.¹⁵⁹ His time to act, especially to fix how crisis migrants are treated, is now.¹⁶⁰

B. *The United States Has a Duty to Rectify Certain Situations Where It Has Directly or Indirectly Contributed to These Humanitarian Emergencies*

The United States is a dominant figure in both Afghanistan and Haiti; as such, it has a moral obligation to rectify the humanitarian emergencies it caused in these countries.¹⁶¹ The United States interfered with many of Haiti's political elections, often to Haiti's detriment.¹⁶² The proximate chain of events that led to the current humanitarian emergency in Haiti started after the 2010 earthquake.¹⁶³ During the 2010 election year, the United States, along with other world leaders, compelled Haiti to hold its elections—not considering the devastation the earthquake inflicted on Haiti.¹⁶⁴ President Martelly, the United States' preferred candidate, won the election and supported Jovenel Moïse to succeed him in 2016, after which Moïse ruled Haiti as an authoritarian with implicit approval from both the Trump and Biden administrations.¹⁶⁵ Moïse selected Ariel Henry as prime minister, who

¹⁵⁵ See Eugene Robinson, *The War in Ukraine Could Hardly Be Going Worse for Putin. Don't Assume He Agrees.*, WASH. POST. (Mar. 17, 2022, 6:05 PM EDT), <https://perma.cc/WL4V-U27B>.

¹⁵⁶ See *id.*

¹⁵⁷ See generally *Explainer: Uniting for Ukraine*, NAT'L IMMIGR. F. (Apr. 28, 2022), <https://perma.cc/Q7MF-D4A8> (outlining how the U4U program established by the Biden administration will help at-risk Ukrainian migrants immigrate to the United States).

¹⁵⁸ See generally #AfghanEvac Letter, *supra* note 24, at 1–2 (requesting the creation of an Afghan Parole program as one way to address the Afghan emergency).

¹⁵⁹ See Mimi Dwyer, *Factbox: U.S. President-Elect Biden Pledged to Change Immigration. Here's How*, REUTERS (Jan. 15, 2021, 10:19 AM), <https://perma.cc/CP77-VD5G>.

¹⁶⁰ See generally *Stop US Deportations*, *supra* note 112 (illustrating that President Biden has maintained a racist Title 42 policy against Haitian migrants, which should be stopped).

¹⁶¹ See generally Cameron, *supra* note 96 (outlining the history between the United States and Haiti); Zucchini, *supra* note 8 (outlining the history between the United States and Afghanistan).

¹⁶² See Cameron, *supra* note 96.

¹⁶³ See Cameron, *supra* note 96.

¹⁶⁴ See Cameron, *supra* note 96.

¹⁶⁵ See Cameron, *supra* note 96.

faced punishment in 2021 for aiding in Moïse's assassination.¹⁶⁶ The United States' political meddling caused substantial hardship for Haitians, and created an obligation for the United States to help Haitian migrants.¹⁶⁷

The United States' occupation in Afghanistan lasted twenty years and encompassed the United States' attempt to build a pro-Western democracy to keep the United States and its allies safe from the Taliban.¹⁶⁸ Although the United States built schools, hospitals, and other facilities, corruption that the United States could not solve continued in the country.¹⁶⁹ Furthermore, the Taliban persisted by building up their attack forces.¹⁷⁰ In 2020, former President Trump negotiated an agreement with the Taliban that included full U.S. withdrawal.¹⁷¹ This agreement did not establish a way of ensuring the Taliban would follow through with their promises.¹⁷² The Taliban agreed to no longer affiliate with Al Qaeda and the Islamic State to cut down on violence and to cooperate with the Afghan government backed by the United States.¹⁷³ Despite these promises, the Taliban continue to wreak havoc in Afghanistan, especially Kabul, by killing thousands and bringing fear to the most vulnerable populations in the nation.¹⁷⁴ Because of the deteriorating situation in Afghanistan after the U.S. withdrawal, the United States has a duty to assist Afghan migrants.¹⁷⁵

C. *The Core Principles of Immigration in the United States Call for Humanitarianism in Times of Need*

The United States has the largest population of immigrants in the world.¹⁷⁶ However, the topic of immigration continues to be heavily debated by parties everywhere.¹⁷⁷ The INA establishes and encourages "migration flows into the United States according to principles of admission that are based upon national interest."¹⁷⁸ Humanitarian assistance is one of these

¹⁶⁶ See Cameron, *supra* note 96.

¹⁶⁷ See Fabiola Cineas, *Why America Keeps Turning Its Back on Haitian Migrants*, VOX (Sept. 24, 2021, 2:40 PM EDT), <https://perma.cc/KK8X-EZWM>.

¹⁶⁸ See Zucchini, *supra* note 8.

¹⁶⁹ See Zucchini, *supra* note 8.

¹⁷⁰ See Zucchini, *supra* note 8.

¹⁷¹ Zucchini, *supra* note 8.

¹⁷² Zucchini, *supra* note 8.

¹⁷³ Zucchini, *supra* note 8.

¹⁷⁴ See Zucchini, *supra* note 8.

¹⁷⁵ See Crocker & Caruso, *supra* note 138.

¹⁷⁶ *Our Nation of Immigrants*, BROOKINGS, <https://perma.cc/YTU8-X6JU> (last visited May 29, 2023).

¹⁷⁷ *Id.*

¹⁷⁸ WILLIAM A. KANDEL & CONG. RSCH. SERV., R45020: PRIMER ON U.S. IMMIGRATION POLICY 1 (2021), <https://perma.cc/FSU9-PLFW>.

“principles of admission that are based upon national interest.”¹⁷⁹ Both temporary and permanent immigration avenues showcase that the United States can and should continue to accept immigrants, especially those fleeing humanitarian emergencies.¹⁸⁰

ANALYSIS

III. In the Short-Term, the United States’ Focus Should Be to Grant Temporary Protection When a Sudden Humanitarian Emergency Occurs to Migrants Fleeing These Scenarios, so They May Escape Life Threatening Circumstances

A. *First, a Humanitarian Parole Program Should Be Established to Quickly and Safely Evacuate At-Risk Crisis Migrants Who Suffer as a Result of Humanitarian Disasters*

The first step that should be taken in times of humanitarian emergency is that the United States should process crisis migrants into the country using HP.¹⁸¹ This is because when a humanitarian emergency occurs, the most important urgent response is to equally allow all at-risk migrants a safe haven.¹⁸² This response would allow those that are outside U.S. borders a means for being paroled in so they may flee the immediate danger that is threatening their livelihood.¹⁸³ Studying the humanitarian emergencies that recently occurred in Afghanistan and Haiti, it is clear that an equal HP program would have benefitted migrants from both countries.¹⁸⁴

1. The United States Should Implement a More Effective Humanitarian Parole Program for Afghanistan

Although the United States implemented HP as a way of processing tens of thousands of Afghan evacuees into the United States, many at-risk migrants in Afghanistan could not evacuate due to the limitations of the program.¹⁸⁵ While at the time, at-risk Afghans hoped the United States

¹⁷⁹ *Id.*

¹⁸⁰ See generally Julia Gelatt, *Explainer: How the U.S. Legal Immigration System Works*, MIGRATION POL’Y INST. (Apr. 2019), <https://perma.cc/ZQ4N-FPSN> (explaining the numerical ceilings that both permanent and temporary visas in the United States have).

¹⁸¹ See generally BRUNO & CONG. RSCH. SERV., *supra* note 17, at 1 (explaining that HP allows a national to be present in the United States for a humanitarian reason).

¹⁸² See generally *Investigating USCIS’ Implementation of Humanitarian Parole and Refugee Processing for Afghan Nationals*, AM. IMMIGR. COUNCIL (Mar. 15, 2022), <https://perma.cc/KH3W-7SPT> (illustrating that in the Afghan crisis, the United States processed Afghan nationals by using HP).

¹⁸³ See BRUNO & CONG. RSCH. SERV., *supra* note 17, at 5–6.

¹⁸⁴ See Narea, *supra* note 3.

¹⁸⁵ See Wolf, *supra* note 32.

would help them all, that hope left when the United States left them stranded.¹⁸⁶ However, the urgent humanitarian emergency that merits a grant of HP in Afghanistan did not end when U.S. military forces withdrew.¹⁸⁷ Rather, the situation is now arguably even worse with the Taliban's control of the government in Afghanistan.¹⁸⁸ These conditions demonstrate that the urgent humanitarian need that warrants the use of HP is still ongoing.¹⁸⁹ Critics of the Biden administration have argued that unless the United States immediately assists Afghanistan, the disastrous emergency that is haunting Afghanistan will continue to grow.¹⁹⁰

The United States implemented policies which implied that those who remained in Afghanistan would be able to apply for HP.¹⁹¹ However, it has become practically impossible to be granted parole, both because applying for HP has become challenging and because there are high burdens of proof for granting HP.¹⁹² As a result, the program is not functioning as well as it could be, which hints that had the United States implemented a clear plan for dealing with the migrants left behind in Afghanistan prior to withdrawal, more migrants would have benefitted from a grant of parole.¹⁹³ In terms of applying for HP, the downfall is that the U.S. Embassy in Kabul is closed and unable to complete processing requests.¹⁹⁴ Afghan nationals who might be eligible for parole, if they submit their own applications or if a third party files their requests, must travel to a third country that has a U.S. embassy so their requests may be completely processed.¹⁹⁵ Traveling outside of Afghanistan is a challenge as the Taliban recently restricted such travel unless nationals "had a clear destination" and further stated that "women

¹⁸⁶ See Wolf, *supra* note 32.

¹⁸⁷ See Jane Ferguson, *Afghanistan Has Become the World's Largest Humanitarian Crisis*, THE NEW YORKER (Jan. 5, 2022), <https://perma.cc/CGE8-ZMQB>.

¹⁸⁸ See *id.*

¹⁸⁹ See #AfghanEvac Letter, *supra* note 24, at 1–2.

¹⁹⁰ See Ezra Klein, *If Joe Biden Doesn't Change Course, This Will Be His Worst Failure*, N.Y. TIMES (Feb. 20, 2022), <https://perma.cc/RP3W-K6U5>.

¹⁹¹ See generally *Information for Afghan Nationals on Requests to USCIS for Parole*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://perma.cc/CHS3-AB4R> (last visited May 29, 2023) [hereinafter *HP for Afghan Nationals*] (explaining how Afghans both in and outside of Afghanistan may apply for HP).

¹⁹² See Joint Letter from Afghan Network for Advoc. & Res. et al. to Joseph R. Biden, Jr., President of the U.S., Alejandro N. Mayorkas, Sec'y of Homeland Sec., U.S. Dept. of Homeland Sec., Ur Mendoza Jaddou, Dir., U.S. Citizenship & Immigr. Servs., Kamala D. Harris, Vice President of the U.S. & Antony Blinken, Sec'y of State, U.S. Dept. of State, *Joint Letter to Biden Administration Expressing Concern Regarding Humanitarian Parole Denials for Afghans* (Dec. 14, 2021), <https://perma.cc/BH8J-23MV>.

¹⁹³ See generally *id.* (providing recommendations for ways the U.S. could fix the current issues migrants are facing when applying for Humanitarian Parole).

¹⁹⁴ See *HP for Afghan Nationals*, *supra* note 191.

¹⁹⁵ *HP for Afghan Nationals*, *supra* note 191.

could not travel overseas for study without a male guardian.”¹⁹⁶ In addition, it is nonsensical to think that those who remained in Afghanistan will be able to travel to third countries, as many at-risk individuals, especially human rights advocates, have gone into hiding.¹⁹⁷

Even still, those who manage to have third parties file their applications for them at U.S. Citizenship and Immigration Services (“USCIS”) are being swiftly denied.¹⁹⁸ The United States has a chance to positively affect many Afghan lives, but instead, it is requiring high evidentiary burdens that are impractical to meet, causing yet another downfall in their execution of helping those migrants left behind.¹⁹⁹ In one denial notice, USCIS writes the denial is due to lack of “documentation from a third-party source *specifically naming the beneficiary, and outlining the serious harm they face.*”²⁰⁰ Frustratingly, parole denials like this one do not even follow the proper standards explained in the USCIS Training Manual on Humanitarian Parole.²⁰¹ This manual explains that parole may be granted due to fear of generalized violence, but denials are calling for more particular descriptions that assert a fear of specified harm.²⁰² Although HP only provides temporary protection, these high evidentiary burdens are similar to the burdens for asylum; asylum provides a permanent status in the United States and HP does not.²⁰³ There is no reason a program that only offers temporary resettlement in the United States should have the same heightened evidentiary burden as one that is meant to provide permanent status.²⁰⁴

Yet another downfall of the current HP program is the inequality of evidentiary burdens that at-risk Afghans in Afghanistan are facing now that Afghans evacuated in August 2021 did not face.²⁰⁵ Those paroled by the United States during the Afghan evacuation are no different from those who are still trying to obtain parole, but the latter are facing complicated burdens

¹⁹⁶ *Taliban Restrict Afghans Going Abroad, Raises Concern from U.S. and UK*, REUTERS (Mar. 1, 2022, 1:42 AM EST), <https://perma.cc/JK2Z-PJXJ>.

¹⁹⁷ *See generally Afghanistan: Taliban Wasting No Time in Stamping out Human Rights Says New Briefing*, AMNESTY INT’L (Sept. 21, 2021), <https://perma.cc/7JXW-WNCX> (explaining that the Taliban are going door-to-door to look for human rights defenders, so they have no choice but to hide).

¹⁹⁸ *See* Sophia Cai & Stef W. Kight, *Scoop: U.S. Begins Denying Afghan Immigrants*, AXIOS (Dec. 8, 2021), <https://perma.cc/RY6J-ZQ4D>.

¹⁹⁹ *See id.*

²⁰⁰ *Id.*

²⁰¹ *See id.*

²⁰² *See id.*

²⁰³ *See* Joint Letter from Afghan Network for Advoc. & Res. et al. to Joseph R. Biden, Jr. et al., *supra* note 192.

²⁰⁴ *See* Joint Letter from Afghan Network for Advoc. & Res. et al. to Joseph R. Biden, Jr. et al., *supra* note 192.

²⁰⁵ *See* Joint Letter from Afghan Network for Advoc. & Res. et al. to Joseph R. Biden, Jr. et al., *supra* note 192.

that the former did not face.²⁰⁶ Furthermore, Afghans that risked their lives and fled to third countries can no longer establish a specific, imminent, harm to their lives by the Taliban because they fled, despite that fear of harm still existing.²⁰⁷ Instead, as a result of no legal status or poor living conditions, these migrants in third countries are living in uncertainty, and with continued denials they are stuck with no resolution.²⁰⁸ If the United States continues to uphold these heightened evidentiary burdens, at-risk Afghans will die before seeing their HP approvals.²⁰⁹ Consequently, USCIS must reconsider the appropriate threat standard that Afghans in Afghanistan could reasonably meet, such as something closer to the “generalized violence” the USCIS manual requires.²¹⁰

Additionally, the United States should use evidence of prior parole programs enacted for similar humanitarian reasons to equally and swiftly amend the current HP program backlogs for at-risk Afghans.²¹¹ After amending the program, the United States will be able to offer parole to at-risk migrants that remain in Afghanistan.²¹² For guidance, the United States can learn a lot from similar post-military occupations such as Operation New Life.²¹³ Most notably, Operation New Life occurred over a period of eight months and resettled over 94% of refugees in the United States.²¹⁴ This far exceeded the maximum of three weeks that the United States evacuated at-risk Afghans before pulling out their forces.²¹⁵ In Operation New Life, the United States implemented four reception centers that served as halfway points for processing these refugees before they reached U.S. shores.²¹⁶ While the United States took similar action processing Afghan evacuees at lily pad

²⁰⁶ See Joint Letter from Afghan Network for Advoc. & Res. et al. to Joseph R. Biden, Jr. et al., *supra* note 192.

²⁰⁷ See Joint Letter from Afghan Network for Advoc. & Res. et al. to Joseph R. Biden, Jr. et al., *supra* note 192.

²⁰⁸ See Joint Letter from Afghan Network for Advoc. & Res. et al. to Joseph R. Biden, Jr. et al., *supra* note 192.

²⁰⁹ See Joint Letter from Afghan Network for Advoc. & Res. et al. to Joseph R. Biden, Jr. et al., *supra* note 192.

²¹⁰ See Joint Letter from Afghan Network for Advoc. & Res. et al. to Joseph R. Biden, Jr. et al., *supra* note 192.

²¹¹ See #AfghanEvac Letter, *supra* note 24, at 1–2.

²¹² See #AfghanEvac Letter, *supra* note 24, at 1–2.

²¹³ See generally #AfghanEvac Letter, *supra* note 24, at 1–2 (explaining that the United States has had prior success with many HP programs).

²¹⁴ OPERATION NEW LIFE, *supra* note 27, at 2, 7.

²¹⁵ See generally Scott Neuman et al., *The Final U.S. Military Plane Has Left Afghanistan as America's Longest War Ends*, NPR, <https://perma.cc/G4Y5-CJDJ> (last updated Aug. 30, 2021, 8:45 PM ET) (outlining that the United States evacuated Afghans from around August 14 until August 30, which is about a two-week period).

²¹⁶ OPERATION NEW LIFE, *supra* note 27, at 6.

stations, this only lasted until the United States withdrew forces.²¹⁷

Looking at Operation New Life's success from establishing multiple refugee processing stations, the United States should recognize that stations must be installed abroad to process the multitude of HP applications currently being filed; this would serve a similar purpose to prior lily pad stations.²¹⁸ One such option is to create a way for Afghans to easily enter third countries that have U.S. embassies.²¹⁹ Then, at-risk Afghans would not fear having to leave Afghanistan and potentially expose themselves to the Taliban.²²⁰ Rather, with the help of the United States, after entering a third country, Afghans would be screened and their applications processed by an adjudicator who recognizes the significant humanitarian reason for processing their request.²²¹ Keeping national security in mind, this application would then go through an identity verification process that would confirm the identity of Afghan nationals.²²² Afghans who are already in third countries with U.S. embassies would immediately benefit from this program.²²³ Another option would be to conditionally accept at-risk Afghans into the United States while conducting the same vetting process for their HP applications.²²⁴ Despite these options, many at-risk Afghans still remain in Afghanistan, including U.S. allies, family members of American citizens, and those in vulnerable communities such as human rights defenders, female leaders, and LGBTQ individuals.²²⁵ The United States needs to act by improving the HP process and immediately approving parole for these vulnerable populations still facing emergency humanitarian circumstances.²²⁶

2. The United States Should Use Humanitarian Parole to Welcome Haitian Migrants

Even though the Afghan evacuee program came with its own set of challenges, Afghan migrants had an option of parole; yet, the United States

²¹⁷ See Miroff, *supra* note 143.

²¹⁸ See Joint Letter from Afghan Network for Advoc. & Res. et al. to Joseph R. Biden, Jr. et al., *supra* note 192.

²¹⁹ See Joint Letter from Afghan Network for Advoc. & Res. et al. to Joseph R. Biden, Jr. et al., *supra* note 192.

²²⁰ See #AfghanEvac Letter, *supra* note 24, at 1–2.

²²¹ See INT'L REFUGEE ASSISTANCE PROJECT ET AL., FULFILLING AMERICA'S PROMISE: OPTIONS TO MAKE U.S. HUMANITARIAN PROTECTION PATHWAYS VIABLE FOR AT-RISK AFGHANS 4 (Nov. 2021), <https://perma.cc/J6NA-KYYP> [hereinafter IRAP et al.].

²²² See *id.* at 4–5.

²²³ See *id.* at 4.

²²⁴ See Zak, *supra* note 139.

²²⁵ See IRAP ET AL., *supra* note 221, at 3.

²²⁶ See IRAP ET AL., *supra* note 221, at 2–3.

did not remotely consider at-risk Haitian migrants for parole.²²⁷ Haitian migrants attempted entry into the United States through the Southern Border after numerous humanitarian emergencies occurred in their home country.²²⁸ This lack of consideration showed inequity on the part of the United States; even though considerations are highly discretionary, the United States clearly favored one group by extending HP to them, but not to the other, even though both groups faced emergencies.²²⁹ Instead of using HP as a means for allowing Haitians to enter the United States at the border, the United States instead decided to do the exact opposite and expelled these migrants through Title 42.²³⁰ While the United States attempted to treat Afghans humanely through HP, Haitians at the Southern Border faced inhumane treatment.²³¹ The Biden administration denounced the treatment of Haitians at the border but did nothing to stop their Title 42 expulsion.²³² This inequity is nonsensical because similar urgent humanitarian needs exist in Haiti that exist in Afghanistan.²³³ Even DHS Secretary Mayorkas has noted that “it is unprecedented for us to see that number of people arrive in one discrete point along the border in such a compacted period of time.”²³⁴ These unprecedented numbers at the border should prove to leadership just how serious the humanitarian emergency in Haiti is.²³⁵

It is difficult not to question why the United States only offered HP to Afghans but not Haitians when both faced extreme humanitarian emergencies that warranted the use of HP.²³⁶ Migrants from Afghanistan

²²⁷ See Narea, *supra* note 3.

²²⁸ Letter from Iván Espinoza-Madrigal, Exec. Dir., Laws. for C.R. et al. to Alejandro Mayorkas, Sec’y of Homeland Sec., U.S. Dep’t of Homeland Sec., Merrick Garland, Att’y Gen., U.S. Dep’t of Just. & Xavier Becerra, Sec’y of Health & Hum. Servs., U.S. Dep’t of Health & Hum. Servs., Humanitarian Immigr. Prot. and Relief for Haitian Refugees 2 (Oct. 25, 2021), <https://perma.cc/RKF4-MR9Z>.

²²⁹ See Narea, *supra* note 3.

²³⁰ See *More Than 40 Human and Civil Rights Leaders: Ongoing Mistreatment and Expulsions of Haitians and Asylum Seekers Will Stain Biden’s Legacy*, NAT’L IMMIGRANT JUST. CTR. (Nov. 17, 2021), <https://perma.cc/R489-BSCB> [hereinafter *Mistreatment and Expulsions*].

²³¹ See Narea, *supra* note 3.

²³² See Sean Sullivan & Tyler Pager, *Facing Black Leaders’ Anger, Biden Condemns Treatment of Haitians*, WASH. POST (Sept. 24, 2021, 10:58 AM EDT), <https://perma.cc/2SX5-N6L9>.

²³³ See generally Letter from Jessica Chicco, Director of New Americans Initiatives, MIRA Coal. et al. to Joseph R. Biden, Jr., President of the U.S. & Alejandro N. Mayorkas, Sec’y of Homeland Sec., U.S. Dep’t of Homeland Sec., *MIRA Coalition Letter to Biden Administration – Haiti* (Oct. 15, 2021), <https://perma.cc/E6YQ-XV73> (highlighting the political, criminal, and environmental situation that Haiti is facing).

²³⁴ Nick Miroff, *Most of the Migrants in Del Rio, Tex., Camp Have Been Sent to Haiti or Turned Back to Mexico, DHS Figures Show*, WASH. POST (Oct. 1, 2021, 5:58 PM EDT), <https://perma.cc/R35V-8FD>.

²³⁵ See *id.*

²³⁶ See generally *Mistreatment and Expulsions*, *supra* note 230 (urging President Biden to welcome at risk Haitians and other Black migrants into the United States).

fled the Taliban takeover of the government, which created dire circumstances.²³⁷ Migrants fleeing Haiti not only fled an unstable government after the assassination of Haitian President Jovenel Moïse, but also back-to-back natural disasters, which also created dire circumstances.²³⁸ DHS Secretary Mayorkas acknowledged the difference in treatment between Afghanistan and Haiti by stating that the United States would help those in Afghanistan who “stood up for us.”²³⁹ But, this should not be the only factor that determines whether the United States helps a country suffering a humanitarian emergency, as the obligation of non-refoulement should equally weigh in.²⁴⁰ United Nations human rights advocates have condemned the United States for expelling thousands of Haitian migrants before giving them the chance to seek asylum as these actions are “inconsistent with international norms.”²⁴¹ Haitian migrants who arrive at the border possess the right to have their claims of fear of persecution in their country of origin, also known as asylum, assessed.²⁴²

It is even more appalling that the emergency in Haiti compares to an older situation of political strife following the Cuban Revolution, which prompted the United States to implement a Humanitarian Parole Program for Cuban migrants.²⁴³ Under this program, which continued for years, the United States paroled Cubans into the country due to “urgent humanitarian reasons.”²⁴⁴ During this time, the United States placed some groups of Cubans, who specifically arrived by boat, into refugee camps and later allowed them into the United States.²⁴⁵ Today, Haitian migrants who make the dangerous journey by boat to the United States do not receive the same welcome.²⁴⁶ The United States recognized that the political strife and extenuating circumstances in Afghanistan and Cuba warranted the use of HP due to the extreme humanitarian emergencies that occurred.²⁴⁷ On this

²³⁷ See Associated Press, *Explainer: What Happened to the Afghanistan Evacuation?*, U.S. NEWS & WORLD REP. (Nov. 26, 2021, 8:38 AM), <https://perma.cc/U3T8-6FNQ>.

²³⁸ See Joint Letter from Amnesty Int’l et al. to Biden Admin., *The United States Must Stop Deportations and Abuse Against Haitians* (Dec. 15, 2021), <https://perma.cc/RHQ7-4G89>.

²³⁹ See Khaleda Rahman, *Jim Acosta Asks Why U.S. Is ‘Welcoming Afghans’ but ‘Sending Haitians Back,’* NEWSWEEK (Sept. 20, 2021, 8:02 AM EDT), <https://perma.cc/M7HG-U8MH>.

²⁴⁰ See generally Stephanie Nebehay, *U.S. Expulsions of Haitians May Violate International Law - UN Refugee Boss*, REUTERS (Sept. 21, 2021, 5:25 PM EDT), <https://perma.cc/H737-VVH7> (stating that the U.N. disapproves the U.S. tactics of expelling asylum seekers at the border).

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ See Danilo Zak, *Explainer: Humanitarian Parole and the Afghan Evacuation*, NAT’L IMMIGR. F. (Aug. 30, 2021), <https://perma.cc/W3L9-EK7K>.

²⁴⁴ *Id.*

²⁴⁵ See Cineas, *supra* note 167.

²⁴⁶ See Kiara Alfonseca, *Hundreds of Migrants Arrive on Boat in Florida Keys*, ABC NEWS (Mar. 7, 2022, 1:02 PM), <https://perma.cc/P6T3-DHB9>.

²⁴⁷ See Zak, *supra* note 243.

same note, the political, environmental, and societal impacts of the current humanitarian emergency in Haiti should also warrant establishing an HP program.²⁴⁸ The lack of a clear HP plan for emergency humanitarian situations has left Haitian migrants to suffer immensely.²⁴⁹

Furthermore, comparing the logistics of an Afghan HP program versus a Haitian HP program, vetting Haitian migrants at the border and admitting them into the United States through HP is arguably much easier.²⁵⁰ In the case of Afghanistan, the United States needs to allocate extra resources to find ways to get these migrants into third countries and process their HP applications.²⁵¹ In the case of Haiti, at-risk migrants arrived at the border in Del Rio, Texas.²⁵² The Del Rio border alone has ten stations that could be used in a manner similar to the lily pad stations created during the Afghanistan evacuation.²⁵³ Additionally, these HP requests could be processed at the makeshift camps the U.S. government created to allegedly allow Haitians to pursue their claims of asylum before being expelled back to Haiti.²⁵⁴ This is one way the United States could handle Haitian HP requests at the border.²⁵⁵

The Biden administration continues a long history of racist U.S. immigration policies against Haitian migrants.²⁵⁶ The violent and inhumane tactics that border patrol used to physically remove Haitian migrants from the border “blatantly display the clear historical relationship between slavery and modern immigration policy, policing, and the carceral state.”²⁵⁷ When the Trump administration began utilizing Title 42, it did so “to maintain a white majority in the United States.”²⁵⁸ The administration used words such as “invasion” to describe the migration of Haitians.²⁵⁹ Title 42

²⁴⁸ See Joint Letter from Amnesty Int’l et al. to Biden Admin., *supra* note 238.

²⁴⁹ See generally Letter from Iván Espinoza-Madrigal et al. to Alejandro Mayorkas et al., *supra* note 228, at 2 (arguing that if Haitians returned to Haiti they would “walk into the arms of death”).

²⁵⁰ See generally Miroff, *supra* note 234 (showing Haitian migrants stuck in border camps and then sent on flights back to Haiti).

²⁵¹ See generally IRAP ET AL., *supra* note 221, at 2–3 (explaining that the United States should create more stations abroad to process Afghan evacuees).

²⁵² See Miroff, *supra* note 234.

²⁵³ See generally *Border Patrol Sectors*, U.S. CUSTOMS & BORDER PROT., <https://perma.cc/2H92-VERB> (last visited May 29, 2023) (listing the numerous border stations at Del Rio, Texas).

²⁵⁴ See generally Miroff, *supra* note 234 (describing that Haitians were forced into camps while they awaited processing of their asylum applications).

²⁵⁵ See generally Letter from Iván Espinoza-Madrigal et al. to Alejandro Mayorkas et al., *supra* note 228, at 2 (requesting an urgent HP program for Haiti).

²⁵⁶ See Marjorie Cohn, *Biden’s Expulsion of Haitian Migrants Is Racist, Illegal — and Trumpian*, TRUTHOUT (Oct. 2, 2021), <https://perma.cc/TUL3-6QQA>.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ CERD: *US Discrimination Against Black Migrants, Refugees and Asylum Seekers at the Border*

affected 22,000 Haitians, at a rate unlike any other population.²⁶⁰ Furthermore, in May 2022, Haitian migrants populated 6% of the Southern Border but populated 60% of mandatory flights back to Haiti; while at the same time, the United States admitted 98.9% of white, Ukrainian migrants.²⁶¹ The writing on the wall is clear — racism continues to drive U.S. immigration policy when it comes to Haitian migrants.²⁶² Haiti has faced many humanitarian emergencies in the past that had advocates calling for the use of HP, such as after the 2010 earthquake, but the United States did not act.²⁶³ The United States could operate a HP program for at-risk Haitians similar to the one it conducted for at-risk Afghans, but the Biden administration is choosing not to.²⁶⁴ The United States must act because Haitian migrants are suffering at levels never seen before and have suffered exclusion from the United States for years, while their country has suffered numerous humanitarian emergencies.²⁶⁵

3. A Humanitarian Parole Program Has a Different Purpose Than Refugee Resettlement Programs

Critics of a streamlined HP program argue that it is a means of bypassing established refugee resettlement programs, which provide permanent status only to those that qualify.²⁶⁶ However, an established parole program would not take away from the current refugee resettlement programs.²⁶⁷ Rather, it would benefit those fleeing emergencies who would otherwise not be able to have their claims addressed quickly because of the already high number of refugees worldwide.²⁶⁸ Across the world in 2020, the refugee count totaled an estimated 26.3 million.²⁶⁹ Due to this high volume, addressing humanitarian emergencies through refugee resettlement programs means the entire process could take a minimum of eighteen to twenty-four months.²⁷⁰ Not doing so would leave many migrants in “dangerous locations

and Beyond, HUM. RTS. FIRST., (Aug. 8, 2022), <https://perma.cc/KM53-XGNP>.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² See Cineas, *supra* note 167.

²⁶³ See Memorandum from Colum. L. Sch. Hum. Rts. Clinic et al., to Roxana Bacon, Chief Couns., U.S. Citizenship & Immigr. Servs., *In Support of a U.S. Pol’y Generously Granting Humanitarian Parole for Haitian Victims of the Earthquake of January 12, 2010* 3 (Feb. 25, 2010), <https://perma.cc/U8SU-ULN>.

²⁶⁴ See Rahman, *supra* note 239.

²⁶⁵ See Azadeh Erfani, *President Biden, It Is Past Time to Protect Haitian Asylum Seekers*, NAT’L IMMIGRANT JUST. CTR. (Sept. 20, 2021), <https://perma.cc/GMW4-UJ2D>.

²⁶⁶ See #AfghanEvac Letter, *supra* note 24, at 4–5.

²⁶⁷ See #AfghanEvac Letter, *supra* note 24, at 4–5.

²⁶⁸ See #AfghanEvac Letter, *supra* note 24, at 4–5.

²⁶⁹ See *An Overview of U.S. Refugee Law and Policy*, *supra* note 50.

²⁷⁰ See generally *An Overview of U.S. Refugee Law and Policy*, *supra* note 50 (illustrating the delays in the refugee resettlement process).

or in difficult circumstances.”²⁷¹ Since these life-threatening emergencies need immediate attention, HP would take the burden away from the backlogged refugee resettlement programs and not entirely replace these programs.²⁷² Then, these refugee resettlement programs would be used as intended, applying the allocated resources to resettle refugees worldwide rather than focusing all their time and money on resettlements only during humanitarian emergencies.²⁷³

4. The United States Must Plan to Utilize Humanitarian Parole for Future Crises

In general, the crises of Afghanistan and Haiti should teach the United States that there needs to be a more streamlined process for granting HP when humanitarian emergencies occur.²⁷⁴ This new avenue would allow for applications to be quickly and accurately addressed.²⁷⁵ With this in mind, the United States could welcome at-risk Afghans, Haitians, and any future at-risk individuals suffering from emergency humanitarian crises by allowing them to apply for parole and benefit from getting immediate relief.²⁷⁶ Furthermore, this would allow for Haitian migrants to stop experiencing disproportionate racism at the border.²⁷⁷ Extending HP during times of humanitarian emergencies is the correct first step in helping crisis migrants, but the short-term protections do not stop there.²⁷⁸

²⁷¹ *An Overview of U.S. Refugee Law and Policy*, *supra* note 50.

²⁷² See #AfghanEvac Letter, *supra* note 24, at 4–5.

²⁷³ See generally *An Overview of U.S. Refugee Law and Policy*, *supra* note 50 (explaining the refugee resettlement program in the United States).

²⁷⁴ See generally #AfghanEvac Letter, *supra* note 24, at 4–5 (arguing that an Afghan Parole Program should be established because there is an urgent need for it).

²⁷⁵ See generally INT’L REFUGEE ASSISTANCE PROGRAM, PROTECTING AT-RISK AFGHANS AFTER THE U.S. MILITARY WITHDRAWAL 2 (2021), <https://perma.cc/D4N3-GDJV> (stating that an Afghan Parole Program would accelerate the review of parole applications).

²⁷⁶ See generally Khaleda Rahman, *50,000 Afghans Could Be Allowed into U.S. on Humanitarian Parole*, NEWSWEEK (Aug. 25, 2021, 10:40 AM EDT), <https://perma.cc/L53H-D3ZT> (stating that thousands of Afghans received the immediate relief of HP).

²⁷⁷ See Letter from Iván Espinoza-Madrigal et al. to Alejandro Mayorkas et al., *supra* note 228, at 2 (outlining the years of racism Haitian migrants have faced and explaining why HP should be utilized).

²⁷⁸ See generally Zak, *supra* note 243 (stating that broadly extending HP for Afghanistan is an important step).

B. *Countries That Are Facing Humanitarian Emergencies Should Be Designated for Temporary Protected Status So That Both Those Nationals Evacuated into the United States and Those Nationals Who Might Already Be in the United States Will Not Be Sent Back*

1. Temporary Protected Status Must Come After Humanitarian Parole

Following the first step of granting HP to at-risk migrants as a way of welcoming them into the United States, the necessary second step is to grant TPS to nationals of the country facing the humanitarian emergency.²⁷⁹ This way, at-risk migrants may extend their temporary protection in the United States and those migrants already living in the United States undocumented will no longer face fear of deportation.²⁸⁰ While there is a possibility to apply for re-parole, it is rarely granted.²⁸¹ The better way to ensure continued short-term protection of at-risk migrants is to use TPS.²⁸² The burden would then be on the United States to recognize when nationals cannot safely return to their countries during humanitarian emergencies, rather than forcing the at-risk migrants already in the United States to prove individualized fear of harm upon returning.²⁸³

2. Haiti's Current Designation Does Not Protect Those Fleeing Environmental Conditions

Haiti's current designation allows all nationals who have continuously resided in the United States "on or before July 29, 2021" to receive temporary protection.²⁸⁴ Although helpful, this designation came as a result of the political strife following the assassination of the President Moïse and does not account for any Haitian migrants who potentially entered the United States undocumented after back-to-back natural disasters in August of 2021.²⁸⁵ This is most likely because the United States did not want to encourage Haitians to emigrate during that time.²⁸⁶ Haiti is facing not only

²⁷⁹ See generally *Temporary Protected Status: An Overview*, AM. IMMIGR. COUNCIL, <https://perma.cc/D7AS-8M3U> (last modified Dec. 23, 2022) (explaining parameters for designating a country for TPS).

²⁸⁰ See generally *id.* (stating TPS protects those who may be undocumented).

²⁸¹ See Eileen Sullivan & Miriam Jordan, *Biden Offers Protected Status to Afghans Already in the United States*, N.Y. TIMES (Mar. 16, 2022, 00:10 EST), <https://perma.cc/J98A-L5BW>.

²⁸² See generally Roy & Klobucista, *supra* note 33 (explaining the protections TPS ensures).

²⁸³ See *Temporary Protected Status: An Overview*, *supra* note 279.

²⁸⁴ U.S. CITIZENSHIP & IMMIGR. SERVS., TEMPORARY PROTECTED STATUS (TPS)- QUESTIONS AND ANSWERS 2 (2022), <https://perma.cc/J8NV-7FUT>.

²⁸⁵ See Alex Dugherty, *Haitian Advocates Appeal for Immediate End to Deportations and Expansion of TPS*, MIA. HERALD (Aug. 17, 2021), <https://perma.cc/FD7T-ZR68>.

²⁸⁶ See generally Oma Seddiq, *Psaki Says 'Horrible' Footage of Border Patrol Agents Thrashing Their Reins at Haitian Migrants Is 'Not Who We Are'*, BUS. INSIDER (Sept. 21, 2021, 1:44 PM),

extraordinary political conditions, but also repeated environmental disasters; in 2021, it sustained a devastating earthquake—which drew comparisons to the 2010 earthquake—followed by a major tropical storm.²⁸⁷ As a result, conditions in Haiti have gone from bad to worse as these environmental disasters have further disrupted Haitians' access to healthcare, food, and income.²⁸⁸

For example, the combination of the earthquake and tropical storm has particularly impeded access to healthcare in rural areas.²⁸⁹ The Emergency Medical Team of the International Medical Corps arrived in Haiti to treat these vulnerable populations, who suffered either directly or indirectly from these environmental conditions.²⁹⁰ Those directly affected experienced trauma and mental health problems, while those indirectly affected, including those who slept in tents outside as a result of the destruction of their homes, suffered from skin and respiratory infections.²⁹¹

Haitian nationals who are even more at risk as a result of these environmental disasters are pregnant women and individuals with disabilities.²⁹² Additionally, because of these environmental conditions, access to water and sanitation services have greatly declined, as before the earthquake and tropical storm hit, two-thirds of the population alone already suffered from the absence of sanitation services.²⁹³ The combination of the earthquake and tropical storm reduced agricultural output and left those who rely on agriculture sales without any form of income.²⁹⁴ Haiti's conditions following the environmental disasters warrant an expansion and extension of TPS to include Haitians who managed to enter the United States after these events occurred.²⁹⁵ This is because those nationals would not be safe returning to Haiti.²⁹⁶ In addition, similar to the TPS expansion and extension after the 2010 earthquake, TPS needs to continue to be expanded

<https://perma.cc/6S5M-ALFF> (quoting DHS Secretary Mayorkas “[w]e have sent a very clear message early on, in light of the fact that we are in the midst of a pandemic, that the border is not open, and people should not take the perilous journey here.”).

²⁸⁷ *2021 Haiti Earthquake and Tropical Storm Grace*, CTR. FOR DISASTER PHILANTHROPY, <https://perma.cc/4GWY-4PBG> (last updated Nov. 9, 2021).

²⁸⁸ See INT’L MED. CORP., 2021 HAITI EARTHQUAKE SITUATION REPORT #3 1 (2021), <https://perma.cc/2HRA-AY8N>.

²⁸⁹ See *id.*

²⁹⁰ See *id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Haiti: Events of 2021*, HUM. RTS. WATCH, <https://perma.cc/U4TM-ZHVZ> (last visited May 29, 2023).

²⁹⁴ *Id.*

²⁹⁵ See Dugherty, *supra* note 285.

²⁹⁶ See generally *Haiti: Events of 2021*, *supra* note 293 (explaining extraordinary conditions in Haiti following the earthquake and tropical storm).

and extended as this emergency will be ongoing.²⁹⁷

3. Afghanistan's Designation Should Have Followed Closer to the Evacuation

The Biden administration designated Afghanistan for TPS on March 16, 2022, for Afghans “already in the United States on or before March 15, 2022.”²⁹⁸ This is a step in the right direction, as many migrants who only had one year with their HP status had to find another way to validly stay in the United States.²⁹⁹ However, this designation should have come earlier than seven months after the Afghanistan evacuation.³⁰⁰ This is because a TPS designation would have helped those estimated 1,500 to 2,000 Afghan nationals already in the United States in danger of losing their status, such as those on student visas.³⁰¹ Additionally, due to this delayed designation, these Afghan nationals potentially faced deportation to their home country.³⁰²

Afghanistan, at a minimum, fell under the broad “other extraordinary conditions” prong needed to grant TPS following the U.S. evacuation in August 2021.³⁰³ Ongoing extraordinary conditions prevented Afghan nationals from returning safely.³⁰⁴ For example, the Taliban and Islamic State of Khorasan Province (“ISKP”) terrorist groups murdered hundreds of civilian Afghan nationals in 2021.³⁰⁵ The Taliban killed an estimated 40% of nationals, half being women and children.³⁰⁶ Taliban forces made a number of religiously motivated attacks, specifically at schools and neighborhoods

²⁹⁷ See generally *DHS Expands Temporary Protected Status for Haitians in U.S.*, AXIOS (May 22, 2021), <https://perma.cc/AM9D-7XQP> (stating that DHS believes “persistent effects of the 2010 earthquake” have continued to be a detriment to Haiti).

²⁹⁸ *DHS Allows Afghan Immigrants in the U.S. to Apply for Temporary Protected Status*, BOUNDLESS (Mar. 16, 2022), <https://perma.cc/H9DH-EVY8>.

²⁹⁹ Rebecca Beitsch, *DHS Gives Temporary Protected Status to Afghans in US*, THE HILL (Mar. 16, 2022, 9:59 AM EDT), <https://perma.cc/LX52-5JPG> [hereinafter Beitsch, *DHS Gives Temporary Protected Status to Afghans in US*].

³⁰⁰ See generally Rebecca Beitsch, *Biden Weighs Temporary Protected Status for Afghans*, THE HILL (Feb. 17, 2022, 1:45 PM EST), <https://perma.cc/M523-3JUC> (explaining that February marked six months since the evacuation and the United States had to designate Afghanistan for TPS) [hereinafter Beitsch, *Biden Weighs Temporary Protected Status for Afghans*].

³⁰¹ See *id.*

³⁰² See *id.*

³⁰³ See generally *Afghanistan: Events of 2021*, HUM. RTS. WATCH, <https://perma.cc/4GYB-QV GX> (last visited May 29, 2023) (explaining the harsh conditions that Afghanistan is facing since the Taliban takeover).

³⁰⁴ See generally *id.* (explaining the harsh conditions that Afghanistan is facing since the Taliban takeover).

³⁰⁵ See *id.*

³⁰⁶ *Id.*

largely populated by the minority Hazara Shia community.³⁰⁷ Women's rights also suffered under Taliban control in 2021.³⁰⁸ Female students faced school closings in October 2021.³⁰⁹ The Taliban caused female educators, female humanitarian workers, and female government employees to lose their jobs or face gender segregation.³¹⁰ Furthermore, the Taliban closed shelters for abused women.³¹¹ As a result, women were forced to either move back in with their abusers or find new places to hide from them.³¹²

Anticipating that the Taliban takeover would make it increasingly impossible to access any freedoms in Afghanistan, the United States should have granted TPS closer to the Afghanistan evacuation to protect those that risked deportation due to expiring visas.³¹³ Redesignation of the TPS protections should have come next so that those who had HP had a way to temporarily remain in the country.³¹⁴ Many nationals that are left in Afghanistan cannot find jobs that are more than one day a week and cannot afford food as a result.³¹⁵ Afghanistan's designation for TPS, followed by a later redesignation as HP, should have come earlier because the "extraordinary and temporary conditions" in the country made it so nationals could not safely return.³¹⁶

4. In Future Crises, Temporary Protected Status Should Follow Humanitarian Parole as It Provides Stronger Short-Term Protections

In future humanitarian emergencies, the United States should follow a grant of HP with a designation for TPS.³¹⁷ As seen with Haiti and Afghanistan, the extraordinary conditions that warrant a grant of TPS last for a long time.³¹⁸ Both Haiti and Afghanistan are still suffering because of

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ See *Afghanistan: Events of 2021*, *supra* note 303.

³¹⁰ See *id.*

³¹¹ Amie Ferris-Rotman & Zahra Nader, *I Don't Know Where to Go: Uncertain Fate of the Women in Kabul's Shelters*, *GUARDIAN* (Oct. 1, 2021, 2:00 AM EDT), <https://perma.cc/HN3F-8XMW>.

³¹² See *id.*

³¹³ See *Afghanistan: Events of 2021*, *supra* note 303.

³¹⁴ See generally Beitsch, *DHS Gives Temporary Protected Status to Afghans in US*, *supra* note 299 (explaining the benefits of designating TPS for Afghanistan).

³¹⁵ See *Educated Urban Afghans Are New Face of Hunger as Jobs and Incomes Dry Up*, *WORLD FOOD PROGRAMME* (Sept. 22, 2021), <https://perma.cc/M3C3-YA2Q>.

³¹⁶ See generally *The Deteriorating Security Situation in Afghanistan*, *VISION OF HUMAN.*, <https://perma.cc/8XN9-8A4U> (last visited May 29, 2023) (showing that data collected affirms Afghanistan is the least peaceful country in the world in 2021).

³¹⁷ See, e.g., Beitsch, *DHS Gives Temporary Protected Status to Afghans in US*, *supra* note 299 (showing an effective use of HP combined with TPS).

³¹⁸ See *Afghanistan: Events of 2021*, *supra* note 303; *Haiti: Events of 2021*, *supra* note 293.

their respective humanitarian emergencies, and it is unsafe for nationals from either country to return.³¹⁹ Future humanitarian emergencies should earn a designation under any of the three TPS prongs, but especially “extraordinary and temporary conditions” due to either political instability, environmental disasters, or human rights violations that will inevitably occur.³²⁰ TPS will act as a complement to HP and will maximize the best short-term solutions for crisis migrants so they can remain in the United States and not fear deportation to their home countries.³²¹

IV. In the Long Term, the United States’ Focus Should Shift to Providing Avenues Through Which These Crisis Migrants, Who Only Have Temporary Protection, Will Be Able to Adjust Their Status So That They May Permanently Remain in the United States

A. *The Use of Adjustment Acts Will Prove to Be Beneficial, as They Provide a Streamlined Way for At-Risk Migrants Who Fled Humanitarian Emergencies to Secure Permanent Status in the United States*

1. *Alternate Pathways to LPR Status Are Not Realistic for Crisis Migrants*

Addressing humanitarian emergencies in the long term will require lasting solutions that will offer permanent status to crisis migrants.³²² In the short term, the solutions of HP and TPS will address the urgency of providing immediate protection to at-risk migrants.³²³ However, there must be a logical next step that offers lasting protections to at-risk migrants, as it will still be unsafe for them to return to their home countries because these humanitarian crises will likely continue.³²⁴ In general, crisis migrants have limited options in applying for permanent status in the United States.³²⁵ These include applying for family-based immigration, SIV visas, or asylum.³²⁶ These options are impractical not only for Afghan, Haitian, and

³¹⁹ See generally *Afghanistan: Events of 2021*, *supra* note 303 (explaining the current country conditions in Afghanistan); *Haiti: Events of 2021*, *supra* note 293 (explaining the current country conditions in Haiti).

³²⁰ See MARTIN ET AL., *supra* note 1, at 5.

³²¹ See generally Beitsch, *DHS Gives Temporary Protected Status to Afghans in US*, *supra* note 299 (explaining the benefits of a TPS designation for Afghan parolees).

³²² See generally LIRS, *AFGHAN EVACUATION: FROM PAROLE TO PERMANENT PROTECTION* 1, 5 (2021), <https://perma.cc/E24M-UWM7> (explaining that evacuated Afghans deserve a pathway to LPR status) [hereinafter LIRS, *AFGHAN EVACUATION*].

³²³ See generally Beitsch, *DHS Gives Temporary Protected Status to Afghans in US*, *supra* note 299 (explaining why following a grant of HP with TPS will immediately help at-risk migrants).

³²⁴ See Stewart Verdery, *Congress Should Pass an Afghan Adjustment Act*, ROLL CALL (Oct. 19, 2021, 6:30 AM), <https://perma.cc/X8EX-EBEJ>.

³²⁵ *Id.*

³²⁶ LIRS, *AFGHAN EVACUATION*, *supra* note 322, at 5.

future crisis migrants, but also for the United States, given the major backlogs at USCIS.³²⁷

During humanitarian emergencies, at-risk migrants may not have other options for adjusting their status, likely because they would not have family members in the United States who could sponsor them for permanent residence.³²⁸ Additionally, most migrants either do not qualify for or cannot wait for the long waiting periods that are currently facing SIV programs.³²⁹ There are around 20,000 SIV applications for principal applicants currently awaiting processing.³³⁰ Moreover, although at-risk migrants technically meet the refugee definition due to the nature of their admission to the United States through HP, they are not eligible for refugee status.³³¹ This is because refugees must apply for this status while they are outside the country which they permanently settle in.³³² Another option these migrants have is to apply for asylum in the United States, which would grant them permanent residence.³³³ One downside is that the asylum process has continued to face major setbacks and the Biden administration has not yet addressed these issues.³³⁴

The COVID-19 pandemic has contributed to the major backlog in processing immigration applications.³³⁵ In 2020, the USCIS and State Department offices, which process these applications, were closed for months.³³⁶ The COVID-19 pandemic made an already delayed system significantly worse.³³⁷ USCIS currently faces an unprecedented 9.5 million requests waiting to be decided.³³⁸ The State Department, where in-person consular interviews are held, is now 532,000 interviews behind.³³⁹ Furthermore, almost 10 million cases are pending with USCIS.³⁴⁰ There are

³²⁷ See Verdery, *supra* note 324.

³²⁸ See Montoya-Galvez, *supra* note 119.

³²⁹ See LIRS, AFGHAN EVACUATION, *supra* note 322, at 4–5.

³³⁰ Julia Gelatt & Doris Meissner, *Straight Path to Legal Permanent Residence for Afghan Evacuees Would Build on Strong U.S. Precedent*, MIGRATION POL'Y INST., <https://perma.cc/42NV-CWN5> (last updated Mar. 16, 2022).

³³¹ LIRS, AFGHAN EVACUATION, *supra* note 322, at 4–5.

³³² LIRS, AFGHAN EVACUATION, *supra* note 322, at 5.

³³³ LIRS, AFGHAN EVACUATION, *supra* note 322, at 5.

³³⁴ Muzaffar Chishti & Julia Gelatt, *Mounting Backlogs Undermine U.S. Immigration System and Impede Biden Policy Changes*, MIGRATION POL'Y INST. (Feb. 23, 2022), <https://perma.cc/S54C-5MZC>; Zack Colman et al., *No Avoiding It Now: Immigration Issues Threaten Biden's Climate Program*, POLITICO (Mar. 6, 2023, 12:42 PM EST), <https://perma.cc/P5A7-E3EW>.

³³⁵ Chishti & Gelatt, *supra* note 334.

³³⁶ Chishti & Gelatt, *supra* note 334.

³³⁷ Chishti & Gelatt, *supra* note 334.

³³⁸ Chishti & Gelatt, *supra* note 334.

³³⁹ Chishti & Gelatt, *supra* note 334.

³⁴⁰ Chishti & Gelatt, *supra* note 334.

400,000 affirmative asylum cases in the queue awaiting decisions.³⁴¹ In January 2022, the standard immigration case took two and a half to three years to be decided.³⁴²

The lack of availability of certain immigrant visas combined with shocking delays in processing applications, specifically asylum applications, proves that these avenues are not effective to address humanitarian emergencies.³⁴³ The current immigration system is not built for emergency humanitarian disasters; it would be unjust to allow crisis migrants to wait in long processing times and to require those who must go through the normal immigration process to wait any longer than they already have.³⁴⁴ Therefore, there must be a different method introduced during times of humanitarian emergency that provides another way for crisis migrants to adjust their status.³⁴⁵

2. The Use of Adjustment Acts Are a Fair and Effective Way to Allow Migrants to Adjust Their Status

Precedent lays the framework for how Adjustment Acts may be utilized to allow crisis migrants to adjust their status.³⁴⁶ An Afghan Adjustment Act was officially introduced on August 7, 2022.³⁴⁷ There is currently no such talk of a Haitian Adjustment Act, which in part could be because the United States did not implement HP for at-risk Haitians, or because Haitians have historically not received the option to adjust their status.³⁴⁸ In order to address the current humanitarian emergencies in Afghanistan and Haiti, a long-term solution calls for Adjustment Acts to be passed for migrants of both countries.³⁴⁹

Congress must pass the newly introduced Afghan Adjustment Act.³⁵⁰ Logistically, this Afghan Adjustment Act could operate similarly to past Adjustment Acts following times of war.³⁵¹ For example, refugees received HP into the United States following the Vietnam War under the Indochina Migration and Refugee Act of 1975.³⁵² Two years later, Congress modified

³⁴¹ LIRS, AFGHAN EVACUATION, *supra* note 322, at 7.

³⁴² Chishti & Gelatt, *supra* note 334.

³⁴³ See LIRS, AFGHAN EVACUATION, *supra* note 322, at 5–6.

³⁴⁴ LIRS, AFGHAN EVACUATION, *supra* note 322, at 7.

³⁴⁵ See LIRS, AFGHAN EVACUATION, *supra* note 322, at 7.

³⁴⁶ Rodriguez, *supra* note 28.

³⁴⁷ S. Res. 4787, 117th Cong. (2022).

³⁴⁸ See generally Cineas, *supra* note 167 (providing background of how Haitian migrants have been treated by the United States).

³⁴⁹ See Narea, *supra* note 3.

³⁵⁰ See *Congress Introduces the Afghan Adjustment Act*, LIRS (Aug. 9, 2022), <https://perma.cc/4EWQ-WGHC>.

³⁵¹ Rodriguez, *supra* note 28.

³⁵² Rodriguez, *supra* note 28.

this Act to give these parolees a pathway to attain LPR status.³⁵³ Under this Act, those parolees admitted between March 31, 1975 and January 1, 1979 could adjust.³⁵⁴ These migrants were given four years to enter the United States, which was a significant period of time that allowed for a maximized number of refugees to benefit from this law.³⁵⁵ For the Afghan Adjustment Act, the current proposal is for any Afghan national who has either received “special immigrant status” or was otherwise paroled into the United States, and it does not set a specific timeline for how long the national has to get to the United States.³⁵⁶ This is positive as there are still Afghan allies remaining in Afghanistan, and this bill provides a way for the United States to process the nationals left behind.³⁵⁷

Additionally, these migrants who entered the United States after the Vietnam War had to be present in the United States for two years and also be admissible.³⁵⁸ Congress determined the realistic boundaries for the period in which parolees could have entered and resided in the United States before being able to adjust.³⁵⁹ For the Afghan Adjustment Act, these migrants should have resided in the United States for two years, which follows the set precedent from the Vietnam War.³⁶⁰ Moreover, for those who have national security concerns, a regular adjustment of status application goes through a screening.³⁶¹ Therefore, adding another screening process to an Afghan Adjustment Act similar to refugee vetting, in addition to prior parole vetting, adds another layer of confirming identities and ensuring individuals do not pose security threats.³⁶² Just as Congress did not put extra burdens on parolees after the Vietnam War, such as having to prove an individualized claim of eligibility to adjust their status, the same should still hold true for Afghan parolees.³⁶³

After offering temporary protections, the next step is creating a Haitian Adjustment Act using precedent for migrants fleeing “a history of repressive

³⁵³ Rodriguez, *supra* note 28.

³⁵⁴ Rodriguez, *supra* note 28.

³⁵⁵ See Rodriguez, *supra* note 28 (stating that migrants fleeing the Vietnam War must have come to the United States between 1975 and 1979).

³⁵⁶ See S. Res. 4787, 117th Cong. (2022).

³⁵⁷ See *id.*; LIRS, AFGHAN EVACUATION, *supra* note 322, at 6.

³⁵⁸ Rodriguez, *supra* note 28.

³⁵⁹ See generally Verdery, *supra* note 324 (explaining that like in the past when Congress passed Adjustment Acts, Congress must pass an Afghan Adjustment Act to ensure the safety of parolees).

³⁶⁰ See S. Res. 4787; Gelatt & Meissner, *supra* note 330.

³⁶¹ See generally Green Card Through Adjustment of Status, CITIZENPATH, <https://perma.cc/GG64-KPNH> (last visited May 29, 2023) (explaining that all Adjustment of Status applications have a required biometric screening where USCIS conducts a background check using a photo, fingerprints, and signature).

³⁶² See S. Res. 4787; Gelatt & Meissner, *supra* note 330.

³⁶³ See Gelatt & Meissner, *supra* note 330.

governments with documented human rights violations.”³⁶⁴ The Cuban Adjustment Act allowed eligible Cuban refugees to adjust their status.³⁶⁵ Haitian migrants should be allowed to similarly adjust their status, like prior Cuban nationals.³⁶⁶ For Cuban refugees to adjust, they must have entered the United States after January 1, 1959, a manageable period as many refugees entered in 1960 or 1961.³⁶⁷ Even more notably, this Adjustment Act was to be active until the President of the United States decided “democratically elected government in Cuba is in power.”³⁶⁸ A similar measure could be taken for Haitian migrants, as in the past, Haitian and Cuban migrants have comparably suffered through multiple governments and other crises.³⁶⁹

Cuban refugees only had to be present in the United States for one year before applying to adjust status; the same policy could be in place for Haitian migrants, where after one or two years they are able to adjust their status.³⁷⁰ Finally, like the Cuban Adjustment Act, those migrants who want to adjust under a Haitian Adjustment Act must show they are admissible to the United States.³⁷¹ It is especially important to compare the Cuban Adjustment Act with a potential Haitian Adjustment Act because although both Cuban and Haitian migrants traveled to the United States by boat seeking asylum, Cuban migrants were accepted and Haitian migrants were not.³⁷² A Haitian Adjustment Act is yet another opportunity for the United States to right past wrongs when it comes to Haitian migrants.³⁷³

Taking the comparisons drawn from past Adjustment Acts, future Adjustment Acts can operate effectively in a similar manner.³⁷⁴ Based on precedent, Congress can determine the period for which migrants had to have entered the United States and how long the adjustment is ongoing, either for a set period or until there are certain actions taken by the country facing the humanitarian emergency.³⁷⁵ Once again following this precedent, it is fair to say that the proper time a migrant should reside in the United

³⁶⁴ Asare, *supra* note 121, at 203.

³⁶⁵ Asare, *supra* note 121, at 203.

³⁶⁶ See generally Asare, *supra* note 121, at 203 (explaining that Cuban nationals were able to adjust their status after one year in the United States).

³⁶⁷ Rodriguez, *supra* note 28.

³⁶⁸ Rodriguez, *supra* note 28.

³⁶⁹ See Cineas, *supra* note 167.

³⁷⁰ See generally Asare, *supra* note 121, at 203 (explaining that the Cuban Adjustment Act could be amended to include Haitian migrants).

³⁷¹ See Rodriguez, *supra* note 28.

³⁷² See Cineas, *supra* note 167.

³⁷³ See generally Asare, *supra* note 121, at 204 (stating Haitian migrants have been historically excluded).

³⁷⁴ See Rodriguez, *supra* note 28.

³⁷⁵ See generally Rodriguez, *supra* note 28 (giving the specific periods that each prior Adjustment Act stated a migrant must have arrived in the United States).

States before adjusting is a period of one to two years.³⁷⁶ Then, this Adjustment Act should ensure a migrant is admissible to the United States.³⁷⁷ Finally, additional measures can be taken to ensure national security, such as additional screenings that go along with the adjustment of status application.³⁷⁸ Past Adjustment Acts have demonstrated that Adjustment Acts for future humanitarian emergencies will work.³⁷⁹

B. *The Failure to Utilize Adjustment Acts Will Be Catastrophic to Those Who Do Not Have Alternate Pathways for Adjusting Their Status, As They Will Constantly Live in a State of Uncertainty*

If crisis migrants could not adjust their status, they would live in a constant state of “legal limbo.”³⁸⁰ There are individuals on the opposing end of the argument that believe these migrants should not be able to adjust their status.³⁸¹ As a result, it becomes relatively impossible for Congress to pass legislation that would have lasting impacts for crisis migrants who suffer humanitarian emergencies.³⁸² Migrants with temporary protection are valuable to the United States because they work, pay taxes, and have lasting impacts on their communities.³⁸³ A potential revocation of temporary protections would affect not only these crisis migrants, but also those that benefit from their contributions to society.³⁸⁴

In the long-term, migrants with only temporary protections will inevitably establish equity in the United States.³⁸⁵ For example, these migrants become homeowners.³⁸⁶ An estimated 31.9% of TPS holders own homes in the United States.³⁸⁷ Additionally, these migrants pay property taxes, participate in neighborhood organizations, and perform community

³⁷⁶ See generally Rodriguez, *supra* note 28 (illustrating that prior Adjustment Acts stated how long a migrant needed to reside in the United States before adjusting).

³⁷⁷ See generally Rodriguez, *supra* note 28 (explaining that prior Adjustment Acts required admissibility of the migrant to the United States).

³⁷⁸ See generally Gelatt & Meissner, *supra* note 330 (suggesting that an Afghan Adjustment Act could have additional screening measures).

³⁷⁹ See Gelatt & Meissner, *supra* note 330.

³⁸⁰ Caroline Coudriet, *Thousands of Afghan Evacuees In ‘Legal Limbo’ In US*, ROLL CALL (Feb. 1, 2022, 5:41 AM), <https://perma.cc/PX6R-EP24>.

³⁸¹ See Geoffrey Heeren, *The Status of Nonstatus*, 64 AM. U. L. REV. 1115, 1180–81 (2015).

³⁸² See *id.*

³⁸³ *Id.* at 1181.

³⁸⁴ See Nicole Prchal Svajlenka, *What Do We Know About Immigrants with Temporary Protected Status?*, CAP (Feb. 11, 2019), <https://perma.cc/6UWH-C58A>.

³⁸⁵ See *id.*

³⁸⁶ CECILIA MENJÍVAR, *TEMPORARY PROTECTED STATUS IN THE UNITED STATES: THE EXPERIENCES OF HONDURAN AND SALVADORAN IMMIGRANTS* 19 (2017), <https://perma.cc/W694-NKWS>.

³⁸⁷ *Id.*

service.³⁸⁸ Furthermore, an estimated 80.3% of migrants with temporary protection pay income taxes.³⁸⁹ Annually, these taxes benefit both the federal government, where they amount to \$2.3 billion, and state and local governments, where they amount to \$1.3 billion.³⁹⁰ Over 88.5% of TPS holders work, sometimes more than one job.³⁹¹ These are essential jobs, such as building and grounds cleaning, maintenance, construction, child care, personal care, and home health aides.³⁹² Given the contributions migrants with TPS make to society, it is unjust to keep them living in fear of losing all they have built in the United States and potentially having to return home.³⁹³

Another issue with leaning on temporary protections in the long term is that any administration that may rise to power in the United States can rescind these protections at any time.³⁹⁴ For example, in 2017, Haiti lost its TPS designation.³⁹⁵ Even though the country had a continuing humanitarian emergency, DHS determined that Haiti could safely receive these migrants as “steps [had] been taken to improve the stability and quality of life for Haitian citizens.”³⁹⁶ At that time, the 59,000 Haitians that lived and worked in the United States grew weary of potentially being put in removal proceedings.³⁹⁷ Putting more migrants in unwarranted removal proceedings would continue to burden the immigration courts where these proceedings occur.³⁹⁸ The average wait time for a case to be adjudicated is fifty-eight months in these courts, as there are 1.6 million cases currently outstanding.³⁹⁹ The immigration courts cannot absorb new cases because these wait times will become even longer and will waste even more resources.⁴⁰⁰ Furthermore, certain administrations may use racist and anti-immigrant reasoning to justify eliminating these temporary protections.⁴⁰¹ For example, two months after his administration removed Haiti’s TPS designation, former President Trump specifically said Haiti, El Salvador, and certain

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ Svajlenka, *supra* note 384.

³⁹¹ MENJÍVAR, *supra* note 386, at 12.

³⁹² Svajlenka, *supra* note 384.

³⁹³ *See* Svajlenka, *supra* note 384.

³⁹⁴ *See generally* Miriam Jordan, *Trump Administration Ends Temporary Protection for Haitians*, N.Y. TIMES (Nov. 20, 2017), <https://perma.cc/S3DL-L2TK> (explaining that the Trump administration ended TPS for many vulnerable populations).

³⁹⁵ *See id.*

³⁹⁶ Leila Fadel, *U.S. Cancels Program for Recent Haitian Immigrants; They Must Leave by 2019*, NPR (Nov. 20, 2017, 9:43 PM ET), <https://perma.cc/S6Q7-RPYV>.

³⁹⁷ *See* Jordan, *supra* note 394.

³⁹⁸ *See* Jasmine Aguilera, *A Record-Breaking 1.6 Million People Are Now Mired in U.S. Immigration Court Backlogs*, TIME (Jan. 20, 2022, 11:31 AM EST), <https://perma.cc/D2WV-PB8X>.

³⁹⁹ *Id.*

⁴⁰⁰ *See id.*

⁴⁰¹ *See* Baranik de Alarcón et al., *supra* note 122, at 30–31.

African nations were “sh*thole countries.”⁴⁰² Leaving decisions regarding crisis migrants with temporary protections at the hands of an administration that could easily rescind these protections would be unjustifiable.⁴⁰³

Crisis migrants, especially those on temporary protections, build lives in the United States.⁴⁰⁴ They experience unconscionable levels of pain, torture, and violence.⁴⁰⁵ It goes against moral and humanitarian obligations to make these migrants suffer through the long-term uncertainty of temporary protection.⁴⁰⁶ Just because the current immigration system is broken does not mean these migrants should suffer even more pain and uncertainty concerning their futures in the United States.⁴⁰⁷ Permanent, lasting protection will not only safeguard migrants but also reward them for the contributions they make in the United States.⁴⁰⁸ The United States must act by passing Adjustment Acts in times of humanitarian emergencies.⁴⁰⁹

CONCLUSION

The time has come for the United States to implement a clear and equal plan to address humanitarian emergencies. As a major international player, the United States has an obligation to help crisis migrants in times of need. Picture the United States in the future, working towards aiding migrants rather than turning away or putting limits on how many are welcome. With Afghanistan, many migrants were left behind and continue to fear the Taliban to this day. With Haiti, many migrants were forced back and continue to fear the violence and instability in their country. The United States has an obligation to assist these migrants directly, and in the future, to implement solutions for dealing with humanitarian emergencies so inequalities no longer occur. In the short-term, HP and TPS will give migrants immediate temporary protection in the United States. In the long-term, a pathway to LPR status must be given to these migrants as precedent shows it can and should be done. The United States must understand the

⁴⁰² Ali Vitali, Kasie Hunt & Frank Thorp V, *Trump Referred to Haiti and African Nations as ‘Sh*thole’ Countries*, NBC NEWS, <https://perma.cc/JH4G-5Q4S> (last updated Jan. 12, 2018, 7:47 AM EST).

⁴⁰³ See, e.g., Baranik de Alarcón et al., *supra* note 122, at 30–31 (giving examples of former President Trump’s anti-immigrant rhetoric and decision making on Hispanic, Black, and Muslim immigrants).

⁴⁰⁴ See Verdery, *supra* note 324.

⁴⁰⁵ See *Why Congress Must Pass an Afghan Adjustment Act*, INT’L RESCUE COMM. (Sept. 12, 2022), <https://perma.cc/U7JR-E7DH>.

⁴⁰⁶ See *id.*

⁴⁰⁷ See *id.*

⁴⁰⁸ See generally Svajlenka, *supra* note 384 (explaining the contributions of immigrants to the United States).

⁴⁰⁹ See generally LIRS, AFGHAN EVACUATION, *supra* note 322, at 6–7 (stating the benefits of an Afghan Adjustment Act).

urgency of humanitarian situations, offer protection to migrants, and ensure this protection will last.