

# COASTAL MIGRATION WITH DIGNITY: SAFEGUARDS FOR VULNERABLE COMMUNITIES

by Randall S. Abate and Aashini Choksi

Randall S. Abate is assistant dean for environmental law studies at the George Washington University Law School. Aashini Choksi is a 2024 graduate of the George Washington University Law School, and a law clerk for the Honorable Robert A. Salerno of the Superior Court of the District of Columbia.

Sea-level rise projections along many areas of the U.S. coast have caused concern for decades.<sup>1</sup> In response to these projections, many scholars have addressed how the law can best respond to impending threats to and shifts in where human and nonhuman coastal communities will live in the second half of this century and beyond. Most of these scholars have focused on managed retreat,<sup>2</sup> insurance,<sup>3</sup> and state buyout schemes.<sup>4</sup>

One dimension that has been overlooked in the literature on sea-level rise adaptation strategies is how the law can best protect already vulnerable communities from sea-level rise threats that will exacerbate their vulnerability. This context has two components: (1) protecting vulnerable receiving communities from the threats of climate gentrification,<sup>5</sup>

and (2) ensuring that vulnerable coastal communities will be able to safely relocate to a new location.

The Inflation Reduction Act (IRA)<sup>6</sup> is a promising recent example of centering environmental justice concerns in climate adaptation efforts. It marks the first time the Joseph Biden Administration's environmental justice goals have been expressly included in a statute.<sup>7</sup> The Act requires 40% of federal funding from climate-related programs to be directed toward "disadvantaged communities."<sup>8</sup>

Despite its laudable goals, however, the focus of the environmental justice provisions of the IRA is almost exclusively on funding. The opportunity for success even in this limited context faces many implementation obstacles. One challenge for the IRA is defining who qualifies as a "disadvantaged community."<sup>9</sup> This eligibility challenge is relevant to the analysis in this Comment. Vulnerability assessments could help determine eligibility criteria for coastal migration assistance, in addition to federal or state tribal recognition status.

To ensure better protection of vulnerable coastal communities, existing legal frameworks must adapt to address impacts to these communities in the face of impending threats of climate migration. At a minimum, the law should be equipped to avoid scenarios like the relocation of thousands of vulnerable residents from New Orleans into the Houston Astrodome in the wake of Hurricane Katrina.<sup>10</sup>

---

*Editor's Note: This Comment was originally presented at the symposium Science and the Law of Sea Level Rise: Reducing Legal Obstacles to Managing Rising Seas, hosted by the Environmental Law Institute and Nova Southeastern University's Shepard Broad College of Law on March 21-22, 2024. The symposium was supported by the National Science Foundation Paleoclimate Office, Award Number 2330829.*

1. See Rebecca Lindsey, *Climate Change: Global Sea Level*, CLIMATE.GOV (Apr. 19, 2022), <https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level>.
2. See John Carey, *Managed Retreat Increasingly Seen as Necessary in Response to Climate Change's Fury*, 117 PNAS 13182 (2020), <https://www.pnas.org/doi/10.1073/pnas.2008198117>; Gabriella Mickel, *Managed Retreat—Funding Difficult Conversations and Initial Steps at the Local Level*, 41 UCLA J. ENV'T L. & POL'Y 138 (2023).
3. See Jeffrey Palm et al., *Climate Change and Insurance: A New Way to Protect Coastal Communities From Sea Level Rise*, U.C. DAVIS GRADUATE PROGRAM ENV'T POL'Y & MGMT. (June 26, 2023), <https://epm.ucdavis.edu/blog/climate-change-and-insurance-new-way-protect-coastal-communities-sea-level-rise>; Chad McGuire, *U.S. Coastal Flood Insurance, Risk Perception, and Sea-Level Rise: A Perspective*, 43 COASTAL MGMT. 5 (2015).
4. See, e.g., New Jersey Department of Community Affairs, *Blue Acres Community Development Block Grant Disaster Recovery Program*, [https://www.nj.gov/dca/ddrm/programs/ida/property\\_ba.shtml](https://www.nj.gov/dca/ddrm/programs/ida/property_ba.shtml) (last visited July 18, 2024).
5. "Climate gentrification" refers to the displacement of vulnerable communities as high-income residents move away from areas affected by climate change. Those with more resources have the ability to relocate away from threats in coastal communities, which leaves low-income residents struggling to retain their economic security and culture with the new affluent

---

residents who have relocated to their communities. See generally Shelia Hu, *What Is Climate Gentrification?*, NRDC (Aug. 27, 2020), <https://www.nrdc.org/stories/what-climate-gentrification>; *Green Gentrification: Urban Renewal or Environmental Exclusion?*, ROBERT F. SMITH (Aug. 17, 2023), <https://robertsmith.com/blog/green-gentrification/>. For a discussion of the challenges of climate gentrification in South Florida, see *infra* Section II.B.

6. H.R. 5376, 117th Cong. (2022) (IRA).
7. See Hannah Perls, *Breaking Down the Environmental Justice Provisions in the 2022 Inflation Reduction Act*, HARV. L. SCH. ENV'T & ENERGY L. PROGRAM (Aug. 12, 2022), <https://eelp.law.harvard.edu/2022/08/ira-ej-provisions/>.
8. See *id.*
9. IRA §50121(d).
10. See Florian Martin, *10 Years Since Katrina: When the Astrodome Was a Mass Shelter*, HOUS. PUB. MEDIA (Aug. 17, 2015), <https://www.houstonpublicmedia.org/articles/news/2015/08/17/120808/10-years-since-katrina-when-the-astrodome-was-a-mass-shelter/>; see also Narayan Sastry & Jesse Gregory, *The Location of Displaced New Orleans Residents in the Year After Hurricane*

Vulnerable communities were once again displaced due to Hurricane Ida in 2021, and lived in hotels for more than a year with little guidance or support.<sup>11</sup>

Two decades after Hurricane Katrina, the political will, funding, and law reforms necessary to avoid such scenarios have been slow to develop, especially with respect to safe harbors for vulnerable communities in the mass migration away from coastal areas in the decades ahead. More recently, the inhabitants of Isle de Jean Charles off the coast of Louisiana have been forced to relocate due to coastal erosion.<sup>12</sup> Similar to the communities affected by Hurricane Katrina, the residents of Isle de Jean Charles were uprooted against their will and forced to relocate with little governmental support.<sup>13</sup>

Unlike the context of severe storms that strike suddenly and trigger reactive responses from all levels of government, the law has a better opportunity to get ahead of the impacts of sea-level rise as a slow-onset trigger for coastal migration. Sea-level rise is a common denominator that prompts two related but distinct types of coastal migration. First, it causes wealthy Florida coastal communities to retreat inland to higher ground to ensure their physical and economic security while encroaching on the neighborhoods of existing vulnerable communities. Second, it causes vulnerable Native Alaskan communities to relocate inland to ensure their survival while striving to retain their cultural identity. This Comment explores how vulnerable coastal communities in both contexts require enhanced legal protections through the lens of “coastal migration with dignity.”

The climate migration literature addresses the notion of migration with dignity as an important dimension of the challenge of climate migration. It focuses on the need to resettle vulnerable populations to new locations with sensitivity to logistical and cultural needs<sup>14</sup> and as a way to avoid conflict.<sup>15</sup> Migration with dignity recognizes the

human rights and “dignity rights”<sup>16</sup> of communities as they resettle into new locations by seeking to safeguard basic rights such as security, standard of living, and access to services.<sup>17</sup> It also seeks to get ahead of this unfolding crisis by facilitating support for voluntary relocation of vulnerable populations and labor training support.<sup>18</sup>

The Comment embraces the spirit and objectives of the “migration with dignity” literature and considers it in a context that is exclusively domestic rather than transboundary. Like the existing literature, it proposes to apply social justice-oriented safeguards to vulnerable communities in the climate migration context, but it does so without delving into the logistics and dignity rights involved in the resettlement process, focusing instead on recommendations to diminish the vulnerability of communities in two climate migration case studies in the United States.

Part I describes the troubling realities of climate gentrification in Florida as well as forced displacement from coastal areas for native communities in Alaska. Part II addresses the existing federal and state legal frameworks in these contexts, and how gaps in each framework exacerbate the vulnerability of these overburdened communities. Part III proposes law reforms to address these concerns. It first recommends adjustments to the Federal Emergency Management Agency’s (FEMA’s) authority that can help limit these vulnerabilities. It then addresses adaptive legal mechanisms in Florida to limit the burdens of climate gentrification on vulnerable communities. Finally, it proposes vulnerability assessments and funding mechanisms to protect Native Alaskan communities that need to be relocated away from coastal areas to safer inland destinations.

## I. The Impact of Sea-Level Rise on Vulnerable Communities

As the effects of climate change worsen and sea-level rise becomes an increasing reality for many coastal regions across the country, many Americans are forced to leave their homes and relocate. For example, coastal communities in both Florida and Alaska have started relocating inland. While these states have vastly different climates, the effects of climate change do not discriminate. Seventy-six percent of Florida’s population<sup>19</sup> and eighty-three per-

*Katrina*, NAT’L LIBR. MED. (June 1, 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4048822>.

11. See Clodagh McGowan, *Displaced by Hurricane Ida, More Than 100 Families Still Living in Hotels*, SPECTRUM NEWS NY1 (Aug. 31, 2022), <https://ny1.com/nyc/all-boroughs/news/2022/08/31/displaced-by-hurricane-ida-more-than-100-families-still-living-in-hotels>; Bahar Ostadan, *NYC Families Displaced by Hurricane Ida to Be Removed From Downtown Hotel*, GO-THAMIST (Feb. 26, 2023), <https://gothamist.com/news/nyc-families-displaced-by-hurricane-ida-to-be-removed-from-downtown-hotel>.
12. See Robynne Boyd, *The People of the Isle de Jean Charles Are Louisiana’s First Climate Refugees—But They Won’t Be the Last*, NRDC (Sept. 23, 2019), <https://www.nrdc.org/stories/people-isle-jean-charles-are-louisianas-first-climate-refugees-they-wont-be-last>.
13. See *id.* While helping communities stay in their homes rather than relocate is preferred, the high risk of displacement in certain areas makes that objective difficult to secure. Many communities have accepted that they will be facing relocation, including those discussed in this Comment. See also Daniel Cusick, *Most Alaskan Tribes Stay Put Despite Climate Threats*, CLIMATEWIRE (May 17, 2024), <https://subscriber.politicopro.com/article/eenews/2024/05/17/most-alaskan-tribes-elect-to-stay-put-despite-climate-threats-00158241>.
14. See, e.g., Shanna N. McClain et al., *Migration With Dignity: A Legal and Policy Framework*, 17 J. DISASTER RSCH. 292, 294-97 (2023).
15. Shanna N. McClain & Carl Bruch, *Migration With Dignity: A Framework to Manage Climate Change and Prevent Conflict*, PEACE CHRON. (Spring 2021), <https://www.peacejusticestudies.org/chronicle/migration-with-dignity-a-framework-to-manage-climate-change-and-prevent-conflict/>.

16. For a discussion of the concept of dignity rights, see generally James R. May & Erin Daly, *Why Dignity Rights Matter*, 19 EUR. HUM. RTS. L. REV. 129 (2019).

17. See, e.g., McClain et al., *supra* note 14, at 294-97.

18. See generally Harriet Farquhar, “Migration With Dignity”: Towards a New Zealand Response to Climate Displacement in the Pacific, 46 VICTORIA U. WELLINGTON L. REV. 29 (2015) (discussing the incentives of a voluntary relocation framework and how migration schemes can work in tandem with existing immigration frameworks); but see Isabella Zink, *Storm Warning: New Zealand’s Treatment of “Climate Refugee” Claims as a Violation of International Law*, 37 AM. U. INT’L L. REV. 441 (2022) (addressing protections available to climate refugees under immigration and environmental law, particularly those currently facing relocation).

19. National Oceanic and Atmospheric Administration (NOAA) Office for Coastal Management, *Florida*, <https://coast.noaa.gov/states/florida.html> (last modified July 16, 2024).

cent of Alaska's population<sup>20</sup> live in coastal areas, posing a high risk to both states.

In Florida, "receiving communities"<sup>21</sup> are threatened because they are at risk of being displaced by migrating wealthy coastal communities; whereas in Alaska, the most vulnerable communities are those that must safely relocate<sup>22</sup> away from coastal areas. The Little Haiti neighborhood in Florida is seeing real-time changes in its demographic as wealthy, white residents move to the neighborhood and push out the local community. In Alaska, Native Alaskan communities living along the coast are forced to move but have no resources or support to relocate. Vulnerable communities are facing climate-induced displacement more than ever before, but lack the necessary support and legal protections to confront these issues.

### A. Florida's Little Haiti Neighborhood

In response to the effects of climate change, many cities have implemented initiatives for tree planting to promote green spaces in their communities.<sup>23</sup> These programs, sometimes referred to as "greening,"<sup>24</sup> "green gentrification,"<sup>25</sup> or "climate gentrification,"<sup>26</sup> create a disparate socioeconomic impact on low-income communities because the introduction of new green spaces attracts wealthier residents and businesses.<sup>27</sup> The process of environmental greening leads to an increase in the perceived desirability of an area, thereby raising the property values, rents, and overall cost of living.<sup>28</sup>

A prime example of both green gentrification and climate gentrification is the Little Haiti district of Miami, Florida, where the neighborhood's high elevation and prime location have created a surge of new residents.<sup>29</sup> As sea levels rise and the risk of relocation looms, wealthy coastal Florida residents are searching for new neighborhoods.<sup>30</sup> Little Haiti is 10 feet above sea level and is in an area of minimal flood hazards, making it an attractive location on the vulnerable coast of South Florida.<sup>31</sup> Leveraging the fear

of climate risk, local developers are marketing properties in elevated areas and prioritizing urban redevelopment to attract higher-income residents.<sup>32</sup> The impacts of climate gentrification create an affordability crisis as low-income residents and communities of color are priced out of their longtime neighborhoods.<sup>33</sup>

Magic City Innovation District, a \$1 billion real estate development planned in the neighborhood, will feature high-rise luxury apartments, high-end retail, and glass office towers. As a result, local residents are forced to relocate due to financial constraints rather than climate risk.<sup>34</sup> Developers are facilitating redevelopment under the guise of climate risk; however, this gentrification is largely driven by investment opportunities.<sup>35</sup> Regardless of the motivations behind these changes, a majority of the population is being displaced with nowhere to go.<sup>36</sup> With an influx of new retail spaces, rental properties, and high-rise buildings combined with Little Haiti's high poverty rate of 46.2%,<sup>37</sup> residents are being priced out of their homes as new residents move to the neighborhood.<sup>38</sup>

The lack of equitable and inclusive policies leaves vulnerable communities even more unprepared to face the increasing risk of sea-level rise and flooding.<sup>39</sup> Residents are required to purchase flood insurance coverage under FEMA, imposing an extra burden on low-income populations. Moreover, recent changes to FEMA that implement new factors in the flood insurance rate calculation will lead to much higher costs of insurance and exorbitant premiums.<sup>40</sup> FEMA has acknowledged the inequitable result of its policies but has not taken action to address these systemic issues, leaving vulnerable populations to fend for themselves.<sup>41</sup> The current disparity between low-income, vulnerable communities and their white, higher-income

20. NOAA Office for Coastal Management, *Alaska*, <https://coast.noaa.gov/states/alaska.html> (last modified July 16, 2024).

21. See Georgetown Climate Center, *Managed Retreat Toolkit*, <https://www.georgetownclimate.org/adaptation/toolkits/managed-retreat-toolkit/social-equity-receiving-communities.html?jurisdiction=10567> (last visited July 18, 2024).

22. See U.S. Climate Resilience Toolkit, *Assessing the Timing and Extent of Coastal Change in Western Alaska*, <https://toolkit.climate.gov/case-studies/assessing-timing-and-extent-coastal-change-western-alaska> (last modified July 12, 2024); see also World Wildlife Fund, *Alaska*, <https://www.worldwildlife.org/stories/alaska-resilient-and-rising> (last visited July 18, 2024).

23. See *Green Gentrification: Urban Renewal or Environmental Exclusion?*, *supra* note 5.

24. See UNIVERSITY OF MINNESOTA, *GREEN GENTRIFICATION* (2020), <https://create.umn.edu/wp-content/uploads/2020/02/Green-Gentrification.pdf>.

25. See *Green Gentrification: Urban Renewal or Environmental Exclusion?*, *supra* note 5.

26. See Hu, *supra* note 5.

27. See UNIVERSITY OF MINNESOTA, *supra* note 24.

28. See Hu, *supra* note 5.

29. See Dieu-Nalio Chéry & Christina Morales, *Little Haiti Residents Fear Losing Their "Home Away From Home"*, N.Y. TIMES (June 12, 2023), <https://www.nytimes.com/2023/06/12/realestate/little-haiti-miami.html>.

30. See *id.*

31. See *id.*

32. See Richard Grant & Han Li, *What's Really Driving "Climate Gentrification" in Miami? It Isn't Fear of Sea-Level Rise*, CONVERSATION (Dec. 6, 2022), <https://theconversation.com/whats-really-driving-climate-gentrification-in-miami-it-isnt-fear-of-sea-level-rise-191737>.

33. See *Green Gentrification: Urban Renewal or Environmental Exclusion?*, *supra* note 5.

34. See Grant & Li, *supra* note 32.

35. See *id.*

36. See Chéry & Morales, *supra* note 29.

37. FLORIDA INTERNATIONAL UNIVERSITY, *LITTLE HAITI COMMUNITY NEEDS ASSESSMENT: HOUSING MARKET ANALYSIS* (2015), [https://metropolitan.fiu.edu/research/services/economic-and-housing-market-analysis/2015-hacdc\\_finalreport.pdf](https://metropolitan.fiu.edu/research/services/economic-and-housing-market-analysis/2015-hacdc_finalreport.pdf).

38. See Grant & Li, *supra* note 32; see also Jayson Velazquez, *Waves of Displacement: Sea Level Rise Triggers Gentrification of Inland Communities*, YALE ENV'T REV. (Feb. 29, 2024), <https://environment-review.yale.edu/waves-displacement-sea-level-rise-triggers-gentrification-inland-communities> (noting this phenomenon, also known as "secondary displacement," in vulnerable communities in Duval, Dade, and Pinellas Counties, and recognizing that "redevelopment projects undertaken without built-in protections for affordable housing and rent stabilization risk contributing to secondary displacement").

39. See Ryan Plano & Amali Tower, *Climate Change Is Exacerbating Gentrification, Displacement, and Inequality in Miami*, CLIMATE REFUGEES (Dec. 8, 2023), <https://www.climate-refugees.org/reports>.

40. See *id.*

41. See *id.*; Han Li & Richard J. Grant, *Climate Gentrification in Miami: A Real Climate Change-Minded Investment Practice?*, 131 CITIES 104025 (2022); see also Lauren Lee, *Racial Disparities Are Working Against Disaster Recovery for People of Color. Climate Change Could Make It Worse*, CNN (Apr. 17, 2023), <https://amp-cnn-com.cdn.ampproject.org/c/s/amp.cnn.com/cnn/2023/04/14/us/racial-disparities-disaster-recovery-iyw-rd/index.html>.

counterparts is only exacerbated by the threats of climate change<sup>42</sup> and the systemic issues associated with FEMA.<sup>43</sup>

## B. Displacement of Native Alaskan Communities

In Alaska, communities are being displaced due to imminent climate risks.<sup>44</sup> Rising temperatures have led to flooding, erosion, an increase in severe storms, and biodiversity impacts that threaten Native Alaskan communities that rely on natural processes and resources.<sup>45</sup> More than 30 Native Alaskan communities face imminent climate displacement, which causes devastating impacts to their culture and way of life.<sup>46</sup> The native villages of Kivalina and Shishmaref are prime examples. Located on the North Slope of Alaska, Kivalina and Shishmaref face severe climate risks that will require their residents to relocate.

In 2003, a U.S. General Accounting Office (now the Government Accountability Office (GAO)) report identified both Kivalina and Shishmaref as imminently threatened areas based on sea-level rise and coastal erosion.<sup>47</sup> Now, more than 20 years later, these communities still face overwhelming threats.<sup>48</sup> Many similar Native Alaskan villages also face threats of erosion, flooding, and permafrost degradation.<sup>49</sup>

Most residents of Kivalina make a living relying on nature as hunting, fishing,<sup>50</sup> and harvesting are major sources of income, all of which are significantly impacted by changing climate conditions.<sup>51</sup> A majority of people in Kivalina rely on public assistance and the number of people in need of support will continue to increase as environmental risks heighten.<sup>52</sup> Yet, the income sources are just one factor in this overarching issue—the entire way of life for these communities is threatened, placing cultures in jeopardy.<sup>53</sup> Some reports note that Kivalina could disappear by 2025.<sup>54</sup>

The town of Shishmaref, located on Sarichef Island off the North Slope of Alaska, is also on the verge of disappear-

ing.<sup>55</sup> A small hunting community comprising 600 people, Shishmaref is considered the “first victim of anthropogenic climate change.”<sup>56</sup> Erosion is impacting the integrity of infrastructure, and the deteriorating coastlines are threatening residents of the three-mile-long island.<sup>57</sup> With the effects of climate change devastating the community and rendering their way of life impossible, residents are forced to migrate in search of viable places to live.<sup>58</sup> Despite their deep connection to their homeland, residents have voted to relocate twice before (in 2002 and again in 2016), but a lack of funding has precluded them from proceeding with these plans.<sup>59</sup>

Kivalina and Shishmaref are just two examples of an ongoing threat to native communities across the country, particularly in Alaska.<sup>60</sup> Most recently, the Akiak Native Community in Southwest Alaska received relocation funding from the federal government.<sup>61</sup> This village, comprising fewer than 500 people, is facing the threat of coastal erosion and deteriorating shorelines, requiring the entire community to move elsewhere.<sup>62</sup>

The U.S. Department of the Interior has allocated funding for tribal communities to relocate, but the application process is lengthy and eligibility criteria is not clear.<sup>63</sup> Of eleven tribes that applied for the funding, six have been denied the financial assistance.<sup>64</sup> Allocating funding for every community exposed to the risk of climate disaster is impracticable, and there are a variety of factors considered to determine financial assistance.<sup>65</sup> Even those who qualify for funding may not receive the full amount needed to relocate an entire community; relocation frameworks must ensure there is adequate support for all needs and not limit the support to funding.<sup>66</sup>

In 2020, five tribes from Alaska and Louisiana, including the native village of Kivalina, filed a complaint with the United Nations asserting that their human rights are being violated by the U.S. government’s failure to take action against climate change.<sup>67</sup> The increasingly severe impacts of

42. See Christopher Flavelle, *Why Does Disaster Aid Often Favor White People?*, N.Y. TIMES (June 7, 2021), <https://www.nytimes.com/2021/06/07/climate/fema-race-climate.html>.

43. See Plano & Tower, *supra* note 39; James R. Elliott & Zheyang Wang, *Managed Retreat: A Nationwide Study of the Local, Racially Segmented Resettlement of Homeowners From Rising Flood Risks*, 18 ENV’T RSCH. LETTERS 6 (2023), <https://iopscience.iop.org/article/10.1088/1748-9326/acd654>.

44. See U.S. Climate Resilience Toolkit, *Relocating Kivalina*, <https://toolkit.climate.gov/case-studies/relocating-kivalina> (last modified May 10, 2024).

45. See *id.*

46. See Dalia Faheid, *Indigenous Tribes Facing Displacement in Alaska and Louisiana Say the U.S. Is Ignoring Climate Threats*, INSIDE CLIMATE NEWS (Sept. 13, 2021), <https://insideclimatenews.org/news/13092021/indigenous-tribes-alaska-louisiana/>.

47. GAO, GAO-04-142, ALASKA NATIVE VILLAGES (2003), <http://www.gao.gov/cgi-bin/getrpt?GAO-04-142>.

48. See Faheid, *supra* note 46.

49. See Emily Witt, *An Alaskan Town Is Losing Ground—And a Way of Life*, NEW YORKER (Nov. 21, 2022), <https://www.newyorker.com/magazine/2022/11/28/an-alaskan-town-is-losing-ground-and-a-way-of-life>.

50. GAO, *supra* note 47.

51. See Witt, *supra* note 49.

52. See *id.*

53. See *id.*

54. See Faheid, *supra* note 46.

55. See Luis Andres Henao, *Climate Migration: Alaska Village Resists Despite Threats*, AP NEWS (Oct. 28, 2022), <https://apnews.com/article/floods-us-news-religion-alaska-oceans-8541ad3be65358def080ec0b513683dd>.

56. See Robin Bronen, *Climate-Induced Displacement of Alaska Native Communities*, BROOKINGS (Jan. 30, 2013), <https://www.brookings.edu/articles/climate-induced-displacement-of-alaska-native-communities/>.

57. See *id.*

58. See *id.*

59. See Henao, *supra* note 55; but see Cusick, *supra* note 13 (discussing how many Alaskan and other Indigenous communities choose to remain in place despite impending threats of climate change).

60. See Faheid, *supra* note 46.

61. See Christopher Flavelle, *In a First, U.S. Pays Tribes to Move Away From Climate Threats*, N.Y. TIMES (Nov. 4, 2022), <https://www.nytimes.com/2022/11/04/climate/native-americans-relocate-climate-change.html>.

62. See *id.*

63. See *id.*

64. See *id.*

65. See Christopher Flavelle, *Biden’s Climate Plan Means Tough Choices: Which Homes Get Saved?*, N.Y. TIMES (Mar. 31, 2021), <https://www.nytimes.com/2021/03/31/climate/biden-climate-infrastructure-resilience.html>.

66. See *id.*

67. See Complaint From Tribes to the United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons et al. (Jan. 15, 2020), [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200116\\_USA-162020\\_complaint-1.pdf](https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200116_USA-162020_complaint-1.pdf); Faheid, *supra* note 46.

climate change are forcing displacement of these communities, placing them at an existential risk.<sup>68</sup> The complaint further alleges that the government has known the adverse effects of climate change on coastal tribes for decades but has failed to assist these communities' adaptation efforts.<sup>69</sup>

A brief was filed in support of a similar petition before the Inter-American Commission on Human Rights in 2023 by five federally recognized Native American tribes.<sup>70</sup> This brief was filed by 25 tribal communities from North, Central, and South America, highlighting the lack of regulation and support to protect Indigenous communities from climate change.<sup>71</sup> Kivalina was included in this brief, citing its shrinking land mass and loss of natural resources.<sup>72</sup> The petition was filed to require states to monitor, mitigate, and prevent environmental threats to tribal communities and to adopt a human rights-based approach to future policies.<sup>73</sup> These efforts underscore the need for a comprehensive regulatory framework to support relocation efforts to help ensure that tribal communities are prepared for the impending climate risks.

## II. Existing Legal Framework

Across all levels of governance, there are few protections in place for vulnerable communities facing climate-induced displacement. At the federal level, FEMA has limited authority, which prevents it from being effective in these situations. Slow-onset climate disasters, such as sea-level rise and coastal erosion, are not considered natural disasters under the agency's standards, limiting its response and capacity to support vulnerable communities.

States have even fewer resources for vulnerable coastal communities, as Florida's government has not acted on the issue and vulnerable communities are overshadowed by wealthier populations. In Alaska, although the government has recognized the dire situation that Native Alaskan communities face, it has not effectively provided guidance or directed support where it is needed most. These governance gaps underscore the need for reform to ensure better protection of vulnerable communities.

### A. Federal

FEMA is a potential source of response to the exacerbating effects of climate change. The U.S. Congress has the

authority to administer federal disaster relief through FEMA,<sup>74</sup> which is the nation's main domestic disaster preparation agency. FEMA's mandate is to provide resources and support to state and local governments to minimize the damage created by natural disasters.<sup>75</sup> Although its explicit purpose is not to address climate change, the agency is increasing its support for climate-related events, including extreme weather and major disasters.<sup>76</sup> In 2023, FEMA announced nearly \$3 billion to help communities enhance resilience to climate change and extreme weather events.<sup>77</sup>

These resilience projects are a step in the right direction in creating proactive measures to address the exacerbating effects of climate change.<sup>78</sup> Citing the increased frequency and intensity of natural disasters, the agency is working to mitigate the effects of many hazards, including extreme flooding.<sup>79</sup> FEMA standards are outlined in the Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), which includes a list of criteria for an event to receive any form of assistance.<sup>80</sup> However, the Stafford Act prioritizes rebuilding and repairing communities affected by disaster, which is not a viable option for residents facing an imminent threat of displacement due to climate conditions.

Slow-onset disasters, such as climate-induced coastal migration, are not addressed in FEMA's regulations.<sup>81</sup> The Stafford Act does not mention or define these types of climate events, and the requirements to qualify for assistance under the Act are difficult to apply to slow-onset disasters.<sup>82</sup> For example, FEMA only considers the effects of a disaster during a specified period; for slow-onset events, the consequences may not be severe enough to trigger FEMA assistance.<sup>83</sup> In fact, more than one-fifth of the most flood-prone properties covered by the National Flood Insurance Program (NFIP) are outside FEMA-designated flood zones.<sup>84</sup> The ongoing effects of climate change that contribute to

68. See Faheid, *supra* note 46.

69. See *id.*

70. See Brief for EarthRights International and Indigenous Communities as Amicus Curiae, Request for an Advisory Opinion on the Scope of the State Obligations for Responding to the Climate Emergency, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (Dec. 18, 2023); Press Release, EarthRights International, Indigenous and Tribal Communities Urge Inter-American Court of Human Rights to Help Uphold Human Rights Protections in the Context of the Climate Crisis (Dec. 19, 2023), [https://earthrights.org/media\\_release/indigenous-and-tribal-communities-urge-inter-american-court-of-human-rights-to-help-uphold-human-rights-protections-in-the-context-of-the-climate-crisis/](https://earthrights.org/media_release/indigenous-and-tribal-communities-urge-inter-american-court-of-human-rights-to-help-uphold-human-rights-protections-in-the-context-of-the-climate-crisis/).

71. See Faheid, *supra* note 46.

72. See *id.*

73. See *id.*

74. See Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 100-707, 102 Stat. 4689 (1988) (amending the Disaster Relief Act of 1974, Pub. L. No. 93-288, 88 Stat. 143) (codified as amended at 42 U.S.C. §§5121-5208 (2006)) (describing when and how the federal government will fund pre- and post-disaster projects).

75. 42 U.S.C. §5174.

76. See Press Release, FEMA, FEMA Announces Nearly \$3 Billion in Funding Selections to Drive Resilience to Climate Change and Extreme Weather Events (Aug. 28, 2023), <https://www.fema.gov/press-release/20240208/fema-announces-nearly-3-billion-funding-selections-drive-resilience-climate>.

77. See *id.*

78. See Press Release, FEMA, ICYMI—Biden-Harris Administration Highlights Climate Resilience Efforts, Touts Local Investments to Protect Against Tomorrow's Hazards (Feb. 27, 2024), <https://www.fema.gov/press-release/20240227/icymi-biden-harris-administration-highlights-climate-resilience-efforts>; Press Release, FEMA, *supra* note 76.

79. See Press Release, FEMA, *supra* note 76.

80. 42 U.S.C. §5133.

81. See DIANE P. HORN ET AL., CONGRESSIONAL RESEARCH SERVICE, CLIMATE CHANGE, SLOW-ONSET DISASTERS, AND THE FEDERAL EMERGENCY MANAGEMENT AGENCY (2021), <https://crsreports.congress.gov/product/pdf/IN/IN11696/3>.

82. See *id.*

83. See *id.*

84. See *Losing Ground: Flood Data Visualization Tool*, NRDC (Jan. 9, 2024), <https://www.nrdc.org/resources/losing-ground-flood-visualization-tool>; see also Jaclyn Lopez, *From Bailout to Righting the Course: The Commonsense Action the United States Must Take to Address Its Flooding Crisis*, 33 TUL. ENV'T

coastal retreat, such as rising sea levels and deteriorating coastlines, are not easily attributed to a single event, making it difficult to apply the FEMA criteria.<sup>85</sup>

Most of the grant programs under FEMA require a federal declaration of natural disaster to qualify for assistance.<sup>86</sup> A slow-onset incident may not be viewed as an emergency or natural disaster, thereby disqualifying otherwise harmful conditions from receiving assistance through FEMA. Additionally, the process requiring the president to make a declaration of natural disaster for assistance will lead to inconsistent and unpredictable support, further exacerbating the effect on vulnerable coastal populations. A GAO report noted that federal programs “do not fully address climate migration,”<sup>87</sup> which results in inequitable and arbitrary distribution of federal assistance.<sup>88</sup>

Even if a slow-onset climate event qualifies for funding, the application process for assistance is complex and extensive.<sup>89</sup> There are long waiting periods to receive grants and precise management of these funds can be difficult.<sup>90</sup> The FEMA website itself acknowledges these drawbacks of the program and the unfortunate outcome of communities not receiving the funding they need.<sup>91</sup> While there are continued efforts to prioritize vulnerable communities, law reform is necessary to protect those most at risk.<sup>92</sup>

## B. Florida

In Florida, there are few protections in place to support communities vulnerable to climate gentrification. The state government has taken surface-level action to address the risks of sea-level rise, but these initiatives do not prioritize the most vulnerable communities nor do they provide clear guidelines or implementation plans. Additionally, policy-makers are enticed by urban redevelopment and the opportunity to attract high-income residents to coastal areas, leaving the current residents vulnerable and unsupported.<sup>93</sup>

Florida Gov. Ron DeSantis has advocated for the Resilient Florida Program, a plan to prepare coastal com-

munities for the impending effects of sea-level rise and flooding.<sup>94</sup> This marks a welcome change from Florida’s previous leadership that refused to acknowledge climate change,<sup>95</sup> but for the reasons discussed below, it still does not go far enough. Worse still, the current government’s reliance on and promotion of fossil fuels exacerbates the gaps in supporting vulnerable communities from the effects of climate change.<sup>96</sup>

In 2021, the Statewide Flooding and Sea Level Rise Resilience bill was signed into law, which established the Resilient Florida Grant Program.<sup>97</sup> This program requires the state to develop risk assessments and resilience plans and to analyze the cost of implementing resilience measures.<sup>98</sup> These plans must consist of ranked projects addressing the risks of flooding and sea-level rise to local communities.<sup>99</sup> Additionally, the bill requires a statewide assessment of vulnerable infrastructure, geographic areas, and an inventory of critical assets.<sup>100</sup>

With an appropriation of more than \$640 million in this bill, Florida has committed funding, time, and other resources to address the issue of climate resilience without clearly defining how vulnerable communities will receive assistance.<sup>101</sup> Moreover, although it includes significant discussion of the issues facing coastal communities, it fails to provide a plan or proactive measures to support communities in need. The bill requires identification of the costs of implementing resilience measures but does not specify where the funds are derived.<sup>102</sup> Additionally, the bill requires the Florida Department of Environmental Protection to compile and rank projects to decrease sea-level rise risks across the state but lacks guidelines for collaboration, implementation, and enforcement.<sup>103</sup>

The population of wealthy residents in Florida continues to grow, leading to rising housing prices and little opportunity for vulnerable communities. Two out of every five Florida lawmakers are millionaires,<sup>104</sup> and the state is home to the most expensive housing market in the coun-

L.J. 1, 14 (2020) (noting that “as a consequence of NFIP-enabled growth, millions of people live in flood-prone areas throughout the United States”).

85. See HORN ET AL., *supra* note 81.

86. Fact Sheet, FEMA, FEMA 101: How Federal Disaster Aid Works (Apr. 30, 2019), <https://www.fema.gov/press-release/20230502/fact-sheet-fema-101-how-federal-disaster-aid-works>.

87. See discussion *infra* Part III on the Climate Displaced Persons Act, a recently introduced bill on climate migration. GAO, GAO-20-488, CLIMATE CHANGE: A CLIMATE MIGRATION PILOT PROGRAM COULD ENHANCE THE NATION’S RESILIENCE AND REDUCE FEDERAL FISCAL EXPOSURE (2020), <https://www.gao.gov/products/gao-20-488>.

88. See Emily Chen, *Addressing Climate Stress and Internal Displacement (Part 2)*, ENV’T.L.INST. (Dec. 6, 2021), <https://www.eli.org/vibrant-environment-blog/addressing-climate-stress-and-internal-displacement-part-2>.

89. GAO, GAO-21-140, DISASTER RESILIENCE: FEMA SHOULD TAKE ADDITIONAL STEPS TO STREAMLINE HAZARD MITIGATION GRANTS AND ASSESS PROGRAM EFFECTS (2021), <https://www.gao.gov/assets/gao-21-140.pdf>.

90. See *id.*

91. See FEMA, *Manage Disaster Recovery Grants and Finances*, <https://www.fema.gov/emergency-managers/practitioners/recovery-resources/community-toolkit/manage-grants-finances> (last updated Jan. 24, 2023).

92. See, e.g., S. 2961, 118th Cong. (2023) (proposed “FEMA Equity Act” would authorize an equity steering group and equity advisor within FEMA to ensure greater equity in federal disaster assistance).

93. See Grant & Li, *supra* note 32.

94. See Florida Department of Environmental Protection, *Resilient Florida Program*, <https://floridadep.gov/ResilientFlorida> (last visited July 18, 2024).

95. See Tom McCarthy, *Florida Banned State Workers From Using Term “Climate Change”*—Report, GUARDIAN (Mar. 8, 2015), <https://www.theguardian.com/us-news/2015/mar/08/florida-banned-terms-climate-change-global-warming>.

96. See U.S. Energy Information Administration, *Florida: State Profile and Energy Estimates*, <https://www.eia.gov/state/analysis.php?sid=FL> (last updated Feb. 15, 2024).

97. See S.B. 1954, 2021 Leg. (Fla. 2021).

98. See *id.*

99. See *id.*

100. See *id.*

101. See *id.*

102. See *id.*

103. See FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, 2022-23 STATEWIDE FLOODING AND SEA LEVEL RISE RESILIENCE PLAN, <https://protectingfloridatogether.gov/sites/default/files/documents/RF%20statewide%20plan%20PFT%5B2%5D.pdf> (noting that Florida is the second-largest producer of electricity in the nation and natural gas fuels about three-fourths of the state’s total generation).

104. See News Service of Florida, *Two Out of Every Five Florida Lawmakers Are Millionaires*, TAMPA BAY TIMES (Sept. 9, 2019), <https://www.tampabay.com/florida-politics/buzz/2019/09/09/two-out-of-every-five-florida-lawmakers-are-millionaire/>.

try.<sup>105</sup> Housing prices are higher than ever before, and the rising cost of homeowners' insurance is driving people out of the state.<sup>106</sup>

The state has responded by providing affordable housing units, but these measures are insufficient to address the growing problem of climate gentrification and displacement. The Live Local Act,<sup>107</sup> passed by the Florida Senate in 2023, is an attempt to support affordable housing developments. The Act provides tax credits for developers to construct affordable housing units and make multifamily rental dwelling units more accessible.<sup>108</sup> However, local officials have pushed back on this initiative, and some have enacted a moratorium on any developments created under the Act.<sup>109</sup>

### C. Alaska

Historically, the U.S. government has not provided proactive financial support to communities facing the threat of climate-induced migration, and has opted instead for reactive funding on a case-by-case basis.<sup>110</sup> Vulnerable communities in Alaska, however, have been able to seek opportunities to fill this gap at the state and local levels.

The Alaska Climate Change Impact Mitigation Program (ACCIMP) addresses the needs of communities faced with displacement. This program provides funding and technical assistance to communities imminently threatened by climate-related impacts, including erosion, flooding, storm surge, and thawing permafrost.<sup>111</sup> It was created to support coastal communities vulnerable to coastal erosion.<sup>112</sup> Funding is allocated in two categories. Noncompetitive funding is provided to specific communities facing heightened risks of climate change, including Kivalina and Shishmaref.<sup>113</sup> The remaining resources are allocated to communities based on four factors: (1) risk to safety during storm or flood events; (2) loss of critical infrastructure; (3) threats to public health; and (4) loss of 10% or more of residential dwellings.<sup>114</sup>

While offering a viable approach to determine which communities require assistance, this state program only provides reactive support rather than proactive assistance. Additionally, the listed requirements may exclude slow-onset disasters and other cumulative impacts of climate change that lead to climate-induced migration, as the risks to health and safety, loss of infrastructure, and threats to public health may not be severe enough to require assistance at a particular point in time. This ad hoc system creates disparate impacts and ultimately does not reach all residents of a vulnerable community, so many have turned to local community-led efforts instead.

Local initiatives in Alaska seek to fill the gaps that vulnerable communities face from a lack of federal support and state-level initiatives like ACCIMP that provide incomplete protection. For example, the Alaska Community Coastal Protection Project (ACCPP) created strategic management plans for different communities facing the risk of climate-induced migration, including both Kivalina and Shishmaref.<sup>115</sup> These plans provide temporary solutions for addressing climate risk, such as funding shoreline protection to combat coastal erosion or assisting with infrastructure redevelopment.<sup>116</sup> A gap in the framework for protecting these vulnerable communities remains, however, and support for coastal migration as a long-term solution is still needed.<sup>117</sup> While these efforts assist with current effects, there is no forward-looking measure to guide residents who are forced to relocate.<sup>118</sup>

The ACCPP has three major drawbacks.<sup>119</sup> First, it involves a competitive application process to secure funding, putting vulnerable communities in competition with one another and wasting their resources by engaging in the process with no guarantee of receiving support.<sup>120</sup> Second, the amount of funds available is far too limited, providing only a temporary solution to an ongoing, systemic issue without identifying where new funding sources may be found.<sup>121</sup> Finally, the absence of standards to implement the funding support squanders the value of the well-intentioned effort, as the lack of guidance has resulted in ad hoc and incomplete responses.<sup>122</sup> Overall, it is difficult for vulnerable communities to qualify for state assistance, and relocation programs are underdeveloped despite the increasingly dangerous conditions for residents each day.<sup>123</sup>

Earmarked funding for climate-induced relocation is a helpful start, but it must be applied clearly and effectively. In January 2016, the Department of Housing and Urban Development allocated \$48.3 million for the resettlement

105. See Robert Frank, *Billionaires Are Driving South Florida Home Prices to New Records*, CNBC (Oct. 19, 2023), <https://www.cnbc.com/2023/10/19/billionaires-are-driving-south-florida-home-prices-to-new-records-.html>.

106. See Greg Allen, *Feeling the Pinch of High Home Insurance Rates? It's Not Getting Better Anytime Soon*, NPR (Oct. 26, 2023), <https://www.mprnews.org/story/2023/10/26/npr-florida-homeowners-insurance-soaring-expensive>.

107. See S.B. 102, 2023 Leg. (Fla. 2023).

108. See *id.*; see also Florida Housing Finance Corporation, *Live Local Act*, <https://www.floridahousing.org/live-local-act> (last visited July 18, 2024).

109. See Joshua S. Andino, *Florida's Live Local Act Sparks New Development While Concerns Fuel Proposed Changes*, CoSTAR (Feb. 11, 2024), <https://www.costar.com/article/1894266372/floridas-live-local-act-sparks-new-development-while-concerns-fuel-proposed-changes>.

110. See Hilary Beaumont, *Alaska Native Community Relocates as Climate Crisis Ravages Homes*, AL JAZEERA (Dec. 15, 2022), <https://www.aljazeera.com/news/2022/12/15/alaska-native-community-relocates-as-climate-crisis-ravages-homes>.

111. See Alaska Department of Commerce, Community, and Economic Development Division of Community and Regional Affairs, *Alaska Climate Change Impact Mitigation Program*, <https://www.commerce.alaska.gov/web/dkra/PlanningLandManagement/ACCIMP.aspx> (last revised Dec. 19, 2023).

112. See *id.*

113. See *id.*

114. See *id.*

115. See Alaska Department of Commerce, Community, and Economic Development Division of Community and Regional Affairs, *Alaska Community Coastal Protection Project*, <https://www.commerce.alaska.gov/web/dkra/PlanningLandManagement/AlaskaCommunityCoastalProtectionProject.aspx> (last visited July 18, 2024).

116. See Bronen, *supra* note 56.

117. See *id.*

118. See *id.*

119. See *id.*

120. See *id.*

121. See *id.*

122. See *id.*

123. See *id.*

of the Jean Charles Choctaw Nation, a tribal community located in coastal Louisiana.<sup>124</sup> This was the first example of clear guidance and federal support for climate refugees in the United States, setting a strong example for future communities seeking assistance.<sup>125</sup> However, recent evidence reveals that the funding was misapplied and the community was not supported in the way it needed.<sup>126</sup> In fact, the tribe filed a civil rights complaint against the Louisiana Office of Community Development, citing ethnic discrimination in resettlement decisionmaking and violation of their sovereign rights.<sup>127</sup>

### III. Prioritize Vulnerable Communities Through Proactive Collaboration

Safeguards for these vulnerable coastal communities must be implemented at the federal, state, and local levels. First, amend the Stafford Act to authorize responses to slow-onset disasters. Currently, FEMA only has the authority to address natural disasters, yet the effects of climate change and climate-induced displacement are severe and life-threatening, albeit on a slower timeline. In the alternative, the proposed FEMA Equity Act should prioritize assistance to vulnerable communities, similar to the IRA, to continue the trend of making FEMA more sensitive to climate change-related realities.

Second, local governments in Florida can implement community benefit agreements (CBAs) and community land trusts (CLTs) to ensure vulnerable communities and lower-income populations are not being priced out of their neighborhoods and becoming victims of climate gentrification. Third, Alaska should implement eligibility criteria based on vulnerability assessments to determine which communities require support and what type of support would be the most beneficial. Given that vulnerable communities have faced bureaucratic and logistical obstacles in obtaining the resources needed, government officials can work with communities to create work plans and timelines to ensure the available resources are used effectively.

#### A. Federal

One of the most impactful opportunities to better support communities like Little Haiti, Kivalina, and Shishmaref is to enlarge FEMA's regulatory scope and authorize the agency to act before harm manifests. By taking proactive measures, FEMA will be able to address slow-onset threats and support communities currently unable to receive assistance. To do so, Congress should amend the Stafford Act to support disaster relief and mitigation for slow-onset, compound, recurring, or cascading disasters.<sup>128</sup>

124. See Faheid, *supra* note 46.

125. See *id.*

126. See *id.*

127. See *id.*

128. "Compound" disasters refer to two or more extreme events occurring simultaneously, such as concurrent heat waves and droughts. See NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, RESILIENCE FOR COMPOUNDING AND CASCADING EVENTS (Steve Moddemeyer et al.

The Stafford Act should clarify FEMA's role and authority within the federal climate change governance framework and ensure that disaster declarations apply to slow-onset events. New criteria for triggering a declaration will be needed, which could be established by expanding the "major disaster declaration" definition to include slow-onset disasters. Alternatively, the creation of a new category under the Stafford Act exclusively for slow-onset disasters would provide funding for relocation and other adaptive efforts. Additionally, assistance should be available as needed rather than during a specified "incident period," as coastal retreat due to climate change is an ongoing issue.

The president of the United States can declare a major disaster for any natural event, including hurricanes, tsunamis, and floods, if the disaster has caused such severe damage that state and local governments cannot respond.<sup>129</sup> A slow-onset disaster, such as sea-level rise, similarly causes damage and displacement that is beyond the capabilities of local governments. By providing an estimate of the amount and severity of damage as well as a description of local efforts and resources utilized to alleviate the disaster, the federal government can provide funding for relocation and internal displacement just as it would for a sudden major disaster, as currently authorized under FEMA. Alternatively, separately defining "slow-onset disasters" as a unique issue facing many local areas around the country will allow for more targeted funding and preventative measures as communities require adaptive mechanisms and relocation support. Rather than require an estimate of the current damage that has already occurred, state governments can proactively address slow-onset threats.

The federal government has started to take steps in the right direction. H.R. 2826, titled the "Climate Displaced Persons Act," was introduced to Congress in 2021 and addresses the adverse effects of climate change and establishes immigration pathways to admit climate-displaced persons into the United States.<sup>130</sup> Provisions of the proposed bill will require the U.S. Department of State to implement a strategy to mitigate the consequences of climate-induced displacement, authorize the president to provide foreign assistance for reducing vulnerability in communities facing adverse effects of climate change, and mandate the president to report on climate-induced displacement around the globe.<sup>131</sup>

The first of its kind, this bill creates awareness and guides the United States on how best to support climate

eds., 2022), <https://nap.nationalacademies.org/catalog/26659/resilience-for-compounding-and-cascading-events>. "Recurrent" disasters sequentially affect a specific area over time, as seen in Puerto Rico from 2017 to 2020, where a string of hurricanes depleted resources, exacerbating the effect of each subsequent disaster. See Gary E. Machlis et al., *A Framework for Research on Recurrent Acute Disasters*, 8 SCI. ADVANCES eabk2458 (2022). A "cascading" disaster refers to a primary event that triggers a chain of consequences. See NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, *supra*. For example, the earthquake that struck Japan in 2011 caused a tsunami. See *id.*

129. 42 U.S.C. §5170.

130. See H.R. 2826, 117th Cong. (2021).

131. See *id.*



refugees entering the United States.<sup>132</sup> It cites various climate reports,<sup>133</sup> and highlights that the United Nations Human Rights Council has recognized that climate change poses an existential threat that has already negatively affected the fulfillment of human rights.<sup>134</sup> The bill, however, does not offer meaningful protection for internally displaced persons and current American residents facing adverse impacts of climate change.<sup>135</sup> Although it underscores the need to protect vulnerable communities, the proposed protections have no clear enforcement mechanisms, and there are no mechanisms to address relocation and resettlement concerns.

Another encouraging recent development at the federal level is FEMA's Building Resilient Infrastructure and Communities (BRIC) program.<sup>136</sup> The program "aims to categorically shift the federal focus away from reactive disaster spending and toward research-supported, proactive investment in community resilience."<sup>137</sup> Among other objectives, the BRIC program supports "infrastructure projects benefiting disadvantaged communities."<sup>138</sup> Though the BRIC program involves encouraging steps away from FEMA's traditional reactive role, much work remains to fully and effectively meet the needs of vulnerable communities seeking to adapt to coastal relocation realities.

## B. Florida

The lack of enforcement guidelines in the Live Local Act and lack of support from local stakeholders has continued to disadvantage vulnerable coastal communities. To address the discrepancies that stem from the Live Local Act, Florida lawmakers should enforce CLTs across the state and establish CBAs for new developments, especially those in already vulnerable areas. Both of these strategies can diminish the burden of climate gentrification by prioritizing accessible housing and ensuring low-income populations are not entirely priced out of their communities.

A CLT is a system of preserving affordable housing by removing land from the market and building affordable housing units. Usually, these affordable housing units are created through the use of a subsidy and then preserved through long-term ground leases or deed covenants. One of the most successful land trusts in the country is the Champlain Housing Trust in Burlington, Vermont.<sup>139</sup> Available

to residents who have less than \$60,000 in liquid assets, this program exclusively focuses on low-income populations and requires homebuyer education.<sup>140</sup> The Champlain Housing Trust has provided access to affordable housing for vulnerable communities to either rent or buy, increasing residential mobility.<sup>141</sup> In Vermont, state and city housing policies have been amended to provide for permanent affordability in housing policies.<sup>142</sup>

This structure can be mirrored to protect vulnerable communities in Little Haiti and other areas of Florida facing climate gentrification. The Champlain Housing Trust was funded through state and city grants in addition to private investments and donations.<sup>143</sup> The Little Haiti CLT can request state and local funding, which would provide more support and guidance for residents. The leaders of the trust must identify target beneficiaries, likely those living below the median income level for the area. These beneficiaries of the land trust can also include vulnerable groups. For example, residents of Little Haiti who have lived there for generations can be given priority within these mechanisms.

Alternatively, a CBA is a legally binding contract for a developer to ensure that there are concrete benefits to a community, such as mandatory low-income housing units or the enforcement of tenant protections.<sup>144</sup> This creates a direct opportunity between developers and local communities without requiring heavy involvement from state and local governments. Developers want buy-in from local residents to reduce the risk of a project<sup>145</sup> and to obtain governmental subsidies and approvals. Communities want support for local businesses and will receive local hiring benefits, as well as general support for accessible housing projects. As both developers and community residents will benefit from CBAs, there is a path forward to implement this mechanism in Little Haiti by partnering with developers in the preliminary stages of a project.

CBAs have been successfully implemented in many areas of the nation for various reasons.<sup>146</sup> In Bayview Hunters Point, San Francisco, residents implemented a CBA with a developer who wanted to convert an abandoned naval shipyard into a residential community and corporate office complex.<sup>147</sup> This agreement mandated that 32% of housing units were affordable.<sup>148</sup> Similarly, Little Haiti

<https://world-habitat.org/world-habitat-awards/winners-and-finalists/champlain-housing-trust> (last visited July 18, 2024).

140. See Champlain Housing Trust, *Eligibility for Shared Equity Program*, <https://www.getahome.org/eligibility-for-sep/> (last visited July 18, 2024).

141. See World Habitat Awards, *supra* note 139.

142. See *id.*

143. See *id.*

144. See U.S. Department of Energy Office of Energy Justice and Equity, *Community Benefit Agreement (CBA) Toolkit*, <https://www.energy.gov/justice/community-benefit-agreement-cba-toolkit> (last visited July 18, 2024).

145. See Jonathan A. Sullivan et al., *Five Key Needs for Addressing Flood Injustice*, EOS (Feb. 13, 2024), <https://eos.org/science-updates/five-key-needs-for-addressing-flood-injustice> (discussing unsafe patterns of urbanization that can stem from developers not accounting for vulnerable populations in coastal areas facing adverse risks of climate change).

146. See La Risa Lynch, *Five Community Benefits Agreements That Worked*, CHI. REP. (May 24, 2016), <https://www.chicagoreporter.com/how-neighborhoods-have-held-developers-accountable-to-their-needs/>.

147. See *id.*

148. See *id.*

132. See *id.*

133. See *id.* §2 (citing the Intergovernmental Panel on Climate Change and the November 2018 Fourth National Climate Assessment).

134. See H.R. 2826, 117th Cong. (2021). The nongovernmental organization Climate Refugees has applauded the bill as the first of its kind in the United States and a valuable step forward. *Climate Displaced Persons Act Re-Introduced in Congress*, CLIMATE REFUGEES (Nov. 22, 2023), <https://www.climate-refugees.org/advocacy/2023/11/22/climate-displaced-persons-act>.

135. See H.R. 2826, 117th Cong. (2021).

136. FEMA, *About BRIC: Reducing Risk Through Hazard Mitigation*, <https://www.fema.gov/grants/mitigation/building-resilient-infrastructure-communities/about> (last updated June 14, 2024).

137. *Id.*

138. *Id.*

139. See Brenda Torpy, *Champlain Housing Trust*, INT'L CTR. FOR CMTY. LAND TRS., <https://cltweb.org/case-studies/champlain-housing-trust/> (last visited July 18, 2024); see also World Habitat Awards, *Champlain Housing Trust*,

residents can propose an agreement with developers in the area to ensure affordable housing units are made available and developers provide accessible features for vulnerable communities. Municipalities with coastal communities should use CBAs to implement higher protections for vulnerable populations and ensure that those facing climate risks feel protected.

### C. Alaska

Given that Alaska has already taken steps to address the growing needs of its vulnerable populations, an entirely new framework is not needed. Instead, local governments should ensure the resources and assistance mechanisms in place actually support those in need. This objective can be realized through (1) the creation of eligibility criteria based on vulnerability assessments to determine communities that need support and how they can best be supported; (2) a proactive response to coastal areas with vulnerable populations; and (3) an adaptive governance framework that includes funding for vulnerable communities. The ACCIMP, which was created to support coastal communities vulnerable to coastal erosion, is an example of adaptive governance; however, its funding mechanisms need to be implemented more equitably and effectively to enhance the protection of threatened communities.

To best serve residents of coastal areas, there should be an integrated social and environmental assessment to evaluate when communities require support and what type of support would be most beneficial. There is federal precedent for relocating communities before disaster strikes.<sup>149</sup> Similar proactive relocation measures could be implemented to minimize the adverse impacts of sea-level rise. Communities can work with local officials to communicate environmental hazards and other changes that may lead to more severe consequences. Currently, communities must apply for funding, but this process should be changed to a proactive government-initiated support program to identify needs and provide resources to these communities.

The vulnerability assessment should also consider factors such as the nature of the climate impact, the degree of exposure to the impact, and the capacity of the vulnerable community and its socioeconomic systems to address the issues. Additionally, there must be an emphasis on understanding regional vulnerability to adequately include each community's unique needs. These assessments will also help officials work with communities to create a systemic proactive response to sea-level rise and provide channels of communication to mitigate issues as they arise. Addressing the threat of relocation before it becomes dire is safer, less

expensive, and will provide for more flexibility in supporting each community's unique needs.

Perhaps the most important priority for these communities is the need to access government resources when and where they are most needed. An adaptive governance framework provides ways for institutional arrangements to flexibly respond to the needs and desires of the community in a changing environment.<sup>150</sup> Through this framework, local governments can monitor changes in the environment and provide dynamic and locally informed responses to best support the community. An adaptive governance framework can create forward-looking measures for residents who must relocate and provide funding, resources, and informational toolkits to ensure those facing displacement have adequate knowledge and support.

The adaptive governance framework should also highlight areas where funding is most needed and how it can be best used. Relocation and flood control are the main issues facing coastal communities, which can be addressed with clear and accessible funding mechanisms. Rather than create a competitive application process for limited amounts of funding with no clear guidance on how to use the resources available, this new framework should list concrete actions and priorities to help communities relocate.

Yet, relocation support should only be offered when relocation reflects the will of the community under the circumstances that each community faces. For example, from the early 2000s, the native village of Kivalina was extremely vulnerable to coastal erosion that threatened the safety of its community. This vulnerability prompted the community's famous lawsuit to seek its projected \$400 million in relocation costs from major multinational oil and gas corporations that contribute significantly to global climate change.<sup>151</sup>

In 2003, the U.S. Army Corps of Engineers (the Corps) and GAO predicted that a dangerous combination of storm activity "could flood the entire village at any time."<sup>152</sup> In 2006, the Corps released a report on the erosion suffered by Kivalina, concluding that climate change limited the extent of sea ice surrounding the island's coastline.<sup>153</sup> A new rock revetment wall installed in 2010 provided the community with a projected 10-15 years to continue living in its location before relocation would become essential.<sup>154</sup>

This case study can inform adaptive governance of coastal climate relocation support for vulnerable commu-

149. See Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9604(i)(11) (2006) (providing the U.S. Environmental Protection Agency (EPA) with authority to temporarily or permanently relocate a community in the face of hazardous waste contamination based on site-specific criteria); National Superfund Permanent Relocation Interim Policy, 64 Fed. Reg. 37012 (July 8, 1999) (Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions, which provides direction to EPA staff on when to consider permanent relocation of residents and businesses living near or on national priorities list (NPL) sites).

150. See Steve Hatfield-Dodds et al., Adaptive Governance: An Introduction, and Implications for Public Policy, Presentation at the 51st Annual Conference of the Australian Agricultural and Resource Economics Society (Feb. 13-16, 2007), <https://ageconsearch.umn.edu/record/10440/?ln=en>; Jasper Eshuis & Lasse Gerrits, *The Limited Transformational Power of Adaptive Governance: A Study of Institutionalization and Materialization of Adaptive Governance*, 23 PUB. MGMT. REV. 276 (2019), <https://doi.org/10.1080/14719037.2019.1679232>.

151. *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 42 ELR 20195 (9th Cir. 2012), cert. denied, 569 U.S. 2000 (2013).

152. GAO, *supra* note 47, at 30.

153. ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS, ALASKA VILLAGE EROSION TECHNICAL ASSISTANCE PROGRAM: AN EXAMINATION OF EROSION ISSUES IN THE COMMUNITIES OF BETHEL, DILLINGHAM, KAKTOVIK, KIVALINA, NEWTOK, SHISHMAREF, AND UNALAKLEET 23 (2006).

154. U.S. Climate Resilience Toolkit, *supra* note 44.

nities moving forward. Through vulnerability assessments, science can provide projections for how long a community can safely reside in its current location. If the community desires to be safely relocated, funding should be provided consistent with the science-informed time frame to relocate the community safely. But some communities may prefer to remain in place for as long as possible and may not seek relocation assistance.<sup>155</sup> Under these circumstances, the resources that may have been applied to support safe relocation should instead be applied to helping the community remain in place for as long as possible.

#### IV. Conclusion

The climate migration crisis is underway around the United States and the world. This Comment has proposed opportunities to amend and adapt existing law to diminish burdens on vulnerable communities in Florida and Alaska as a result of this growing migration crisis. It explored two distinct yet related climate migration case studies. The first involves climate gentrification and secondary displacement

challenges that receiving communities in Florida face as wealthy coastal communities seek refuge inland. The second addresses Native Alaskan coastal communities who require assistance to avoid sea-level rise-induced threats to their safety and culture, and the need for support in securing a safer alternative home inland.

We have identified gaps in the existing federal and state legal frameworks and how gaps in each framework exacerbate the vulnerability of these overburdened communities. At the federal level, FEMA lacks the authority to respond to slow-onset disasters and intervene before a disaster strikes. We recommend: (1) adjustments to FEMA's authority that can help limit these vulnerabilities; (2) adaptative legal mechanisms in Florida to limit the burdens of climate gentrification on vulnerable communities; and (3) vulnerability assessments, funding mechanisms, and adaptive governance strategies to protect Native Alaskan communities that need to be relocated away from coastal areas to safer inland destinations, while remaining sensitive to the needs of those communities that prefer to remain in place.

---

155. See, e.g., Cusick, *supra* note 13 (noting that community ties and relocation costs often influence coastal Native Alaskan communities to remain in place despite climate change-related threats that may necessitate relocation).