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# Natural Disasters and the Government's Destructive Response: A Holistic View on the Impacts of Noncitizen Exclusion from Federal Public Benefit Programs

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NATURAL DISASTERS AND THE GOVERNMENT'S  
DESTRUCTIVE RESPONSE: A HOLISTIC VIEW ON THE  
IMPACTS OF NONCITIZEN EXCLUSION FROM FEDERAL  
PUBLIC BENEFIT PROGRAMS

*Faith Zellman\**

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## I. INTRODUCTION

In the past four decades, the United States has sustained nearly 260 weather and climate disasters, leading to billions of dollars in damages, the destruction of communities, and more than 13,000 associated fatalities.<sup>1</sup> Disasters have been particularly destructive within the past several years due to the increasing global temperature and frequency of weather extremes.<sup>2</sup> The severity of these disasters, coupled with environmental exposure and vulnerabilities, has displaced millions of people from their homes,<sup>3</sup> pushing them “beyond normal coping capacities.”<sup>4</sup> As the frequency and intensity of disasters escalate, this number will only continue to increase.<sup>5</sup>

Widespread displacement and disruption of normal life leads to community-wide distress and “heightened protection concerns for

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1. Adam B. Smith, *2010-2019: A Landmark Decade of U.S. Billion-Dollar Weather and Climate Disasters*, CLIMATE: BEYOND THE DATA (Jan. 8, 2020), <https://www.climate.gov/news-features/blogs/beyond-data/2010-2019-landmark-decade-us-billion-dollar-weather-and-climate> [https://perma.cc/5ZKE-9VUE]. These numbers are increasing as climate change related weather becomes more severe. See SAM BARRETT ET AL., ASSESSING VULNERABILITIES TO DISASTER DISPLACEMENT: A GOOD PRACTICE REVIEW 7 (2021) (first citing Intergovernmental Panel on Climate Change [IPCC], *Special Report: Global Warming of 1.5°C*, at 541–62 (J.B. Robin Matthews et al. eds., 2018); then citing Intergovernmental Panel on Climate Change [IPCC], *Climate Change 2021: The Physical Science Basis*, at 1–31 (Valérie Masson-Delmotte et al. eds., 2021); and then citing ECKSTEIN ET AL., GLOBAL CLIMATE RISK INDEX 2021: WHO SUFFERS FROM THE MOST EXTREME WEATHER EVENTS? WEATHER RELATED LOSS EVENTS IN 2019 AND 2000-2019 (Joanne Chapman-Rose et al. eds., 2021)).
2. These extremes include significant flooding, severe storms, tornadoes, wildfires, and drought. See Smith, *supra* note 1; see also Katharine Hayhoe et al., *Our Changing Climate*, in 2 IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES: FOURTH NATIONAL CLIMATE ASSESSMENT 72, 73–75 (Linda O. Mearns ed., 2018).
3. See *Disasters and Climate Change*, INTERNAL DISPLACEMENT MONITORING CTR., <https://www.internal-displacement.org/disasters-and-climate-change> [https://perma.cc/7GJT-76ZR] (last visited Dec. 15, 2022).
4. *Id.*; BARRETT ET AL., *supra* note 1, at 12 (“Coping capacity refers to the ability of people, organizations [sic] and systems, using available skills and resources, to manage adverse conditions, risk, or disasters. The capacity to cope requires continuing awareness, resources, and good management, both in normal times and during disasters . . . . Coping capacities contribute to the reduction of disasters risks.”).
5. See *Disasters and Climate Change*, *supra* note 3.

people with specific needs and [those] rendered homeless such as women, children, older people[,] and people with disabilities.”<sup>6</sup> The impacts of displacement after a disaster, however, are not limited to the communities and families that were forced to migrate and abandon their homes.<sup>7</sup> Previously unaffected families located in areas where displaced people seek refuge inherit adverse effects of a disaster.<sup>8</sup> Consequently, the presence of displaced people in receiving areas overloads their societal structures and burdens the stability of preexisting support systems.<sup>9</sup> This influx undermines the ability of communities, especially vulnerable and marginalized communities, to maintain and achieve sustainable development.<sup>10</sup> The destabilizing effect on both disaster-affected and receiving areas increases the importance and urgency to ensure adequate assistance and protection for vulnerable people.<sup>11</sup>

As weaker communities<sup>12</sup> succumb to the effects of disasters, their destruction will infect healthier, more salvageable communities, leading to a nation incapable of effectively responding to disasters.<sup>13</sup> “Due to the pace at which weather-related disaster risks are increasing from climate change, the government must make concerted efforts to reduce the risks to vulnerable people from extreme weather events in the future.”<sup>14</sup> Despite the government’s capabilities,<sup>15</sup> there are instances when the government understates the needs of communities lacking legal citizenship and explicitly

6. *Id.*

7. *See id.* When people are evacuated, often they are able to return to their homes soon after; however, in other cases, safe return is not an option. *Id.*

8. *Id.*

9. *See infra* Section III.B.

10. *See* BARRETT ET AL., *supra* note 1, at 7. Displacement in disaster contexts has a disproportionate impact on vulnerable and marginalized members of society. *Disasters and Climate Change, supra* note 3.

11. *Disasters and Climate Change, supra* note 3.

12. For the sake of shorthand reference, “weaker” vs. “stronger” communities is being used to describe the communities’ ability to cope with disasters, not their intrinsic abilities to reckon with disaster. *See* BARRETT ET AL., *supra* note 1, at 12.

13. Deficiencies in any part of welfare, whether it be food, healthcare, work, or shelter, is likely to have a negative impact on the self-sufficiency of a community and its overall development. *See generally* Samuel Sellers et al., *Climate Change, Human Health, and Social Stability: Addressing Interlinkages*, ENV’T HEALTH PERSP., Apr. 19, 2019, at 1, 1–9 (discussing how environmental changes can affect social stability).

14. BARRETT ET AL., *supra* note 1, at 8.

15. *See generally* FED. EMERGENCY MGMT. AGENCY, DISASTER RELIEF FUND: FISCAL YEAR 2023 FUNDING REQUIREMENTS 6–8 (2022) (documenting the funding of FEMA). *See infra* Part IV.

excludes noncitizens<sup>16</sup> from necessary aid and assistance.<sup>17</sup> Failing to include noncitizens in most federally-funded government assistance programs could be devastating to these individuals and the general well-being of the United States.<sup>18</sup>

This commentary introduces an alternative perspective on the current restrictions on welfare and public benefit availability and sheds light on the unresolved disparities undocumented immigrants face during times of rapid climate change.<sup>19</sup> Part II discusses what it means for a community to be vulnerable and ill-prepared for a natural disaster.<sup>20</sup> Part III examines the government's current efforts to compensate for the welfare disparities contributing to a community's vulnerability.<sup>21</sup> Part IV illustrates why the gaps in our current systems<sup>22</sup> could be detrimental to the country and proposes suggestions to avoid further destruction of already deteriorating communities.<sup>23</sup>

## II. VULNERABLE IMMIGRANT COMMUNITIES CONSISTENTLY STRUGGLE TO ANTICIPATE AND RECOVER FROM DISASTERS

In the event of a natural disaster, some communities are better prepared and quicker to recover, while others who lack sufficient disaster planning take severe, life-altering hits.<sup>24</sup> Disaster preparedness, such as having non-electric light sources on hand, buying or preparing water reserves, and buying canned or nonperishable food, may be too costly for people of low

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16. See Christopher Metchnikoff et al., *End of Life Care for Unauthorized Immigrants in the U.S.*, 55 J. PAIN & SYMPTOM MGMT. 1400, 1400 (2018). The terms “undocumented immigrants,” “noncitizens,” and “unauthorized immigrants” are used interchangeably to characterize non-U.S. born individuals who do not have citizenship in the United States.

17. See *infra* Section III.B.

18. See *infra* Part IV.

19. The scope of this comment is limited to undocumented immigrants, excluding lawful permanent residents, resident nonimmigrants, and refugees and asylees. See discussion *infra* Parts II–IV.

20. See *infra* Part II.

21. See *infra* Part III.

22. See *infra* Part III.

23. See *infra* Part IV.

24. See BARRETT ET AL., *supra* note 1, at 12. People are forced to leave their homes due to a disaster, resulting from exposure to a natural hazard in a situation where they are too vulnerable and lack the resilience to withstand the impacts of that hazard. See discussion *infra* Part IV.

socioeconomic status, increasing the need for external assistance.<sup>25</sup> Similarly, vulnerable communities may also lack the money and resources needed to evacuate despite timely warnings of an incoming disaster.<sup>26</sup> Insufficient emergency planning then overwhelms the community's systems, leaving people without shelter struggling to access emergency services or stranded while awaiting evacuation assistance.<sup>27</sup>

A community's proactive and reactive measures are based on their vulnerability and adaptive capacity, each of which is heavily influenced by the other.<sup>28</sup> Vulnerability, in environmental contexts, is defined as the propensity or predisposition to be adversely affected by climate disasters.<sup>29</sup> Social, economic, political, cultural, institutional, and environmental conditions are all factors of vulnerability that affect a group's capacity to anticipate, cope with, resist, and recover from adverse effects of physical events (e.g., natural disasters).<sup>30</sup> Those most vulnerable include the economically disadvantaged, racial and ethnic minorities, the uninsured, low-income children, the elderly, and the homeless.<sup>31</sup> These populations "live with a disproportionate share of impacts and suffer the related health and quality of life burdens" that follow major environmental events.<sup>32</sup> For example, "low-income and immigrant communities . . . often do not have the required resources to pay for insurance, rebuild, or invest in [disaster] safety."<sup>33</sup> Extreme disasters

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25. See SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., GREATER IMPACT: HOW DISASTERS AFFECT PEOPLE OF LOW SOCIOECONOMIC STATUS 4-5 (2017) [hereinafter SAMHSA].

26. See *id.*

27. See Gilbert A. Nick et al., *Emergency Preparedness for Vulnerable Populations: People with Special Health-Care Needs*, 124 PUB. HEALTH REP. 338, 338 (2009). Hurricanes Katrina and Rita exposed major gaps in emergency preparedness planning amongst vulnerable populations. See *id.*

28. See ROSEMARY LYSTER, CLIMATE JUSTICE AND DISASTER LAW 135 (2015). Vulnerability and adaptive capacity are both terms of art in climate literature.

29. See *id.*

30. See *id.*

31. See, e.g., *Vulnerable Populations: Who Are They?*, 12 AM. J. MANAGED CARE (SUPP.) S348, S348 (2006). The vulnerability of these individuals is enhanced by race, ethnicity, age, sex, and factors such as income, insurance coverage (or lack thereof), and absence of a usual source of care. See LYSTER, *supra* note 28.

32. Michael Méndez et al., *The (In)visible Victims of Disaster: Understanding the Vulnerability of Undocumented Latino/a and Indigenous Immigrants*, 116 GEOFORUM 50, 52 (2020).

33. *Id.* In instances where low-income and immigrant communities lack resources to invest in fire safety, their vulnerability to wildfire increased. *Id.* at 51-52.

contribute to the loss of habitable land and viable livelihoods.<sup>34</sup> They force vulnerable communities that are unable to rebuild their homes to migrate elsewhere<sup>35</sup> or continue to live in unsafe living environments.<sup>36</sup> In addition to the loss of their homes, people displaced by disaster “endure family separation, [loss of] their possessions, and experience trauma and depression.”<sup>37</sup>

A community’s vulnerability severely impacts its adaptive capacity, or the ability to adapt to the causes and impacts of climate change.<sup>38</sup> A lack of capacity, consequently, increases vulnerability and thus decreases a population’s overall resilience against disasters.<sup>39</sup> Human resilience heavily depends on larger freedoms,<sup>40</sup> and the importance of social protections cannot be overlooked in maintaining the basic structures essential to the preservation of a community.<sup>41</sup> There is an emerging consensus that vulnerability of societies is a starting point, rather than an outcome, of climate risks and actual losses caused by disasters.<sup>42</sup> In other words, disasters do not cause a community to be vulnerable; rather, vulnerability is a preexisting condition severely aggravated by the occurrence of extreme weather.<sup>43</sup> Accordingly, vulnerability must be assessed before disasters occur to bring focus to the societal and economic

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34. *Disasters and Climate Change*, *supra* note 3.

35. Forced migration due to environmental conflict is a source of vulnerability. LYSTER, *supra* note 28, at 135–36.

36. *See infra* text accompanying notes 107–16.

37. Elizabeth Ferris, *Displacement, Natural Disasters, and Human Rights*, BROOKINGS (Oct. 17, 2008), <https://www.brookings.edu/on-the-record/displacement-natural-disasters-and-human-rights/> [<https://perma.cc/M4MN-XXNX>].

38. *See* LYSTER, *supra* note 28, at 137–38.

39. *Id.* at 138 (“[R]esilience is the ability of a system and its component parts to anticipate, absorb, accommodate or recover from the effects of a potentially hazardous event in a timely and efficient manner. This includes ensuring the preservation, restoration, or improvement of a system’s essential basic structures and functions.”).

40. *Id.* at 138–39.

41. *Id.*

42. Joern Birkmann et al., *Understanding Human Vulnerability to Climate Change: A Global Perspective on Index Validation for Adaptation Planning*, *SCI. TOTAL ENV’T*, Jan. 10, 2022, at 1, 2. This consensus stems from the fifth assessment report conducted by the Intergovernmental Panel on Climate Change. *See generally* INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE [IPCC], *Climate Change 2007: Synthesis Report* iii, v (Lenny Bernstein et al. eds. 2008) (reporting up-to-date, policy-relevant, scientific, technical, and socioeconomic information on climate change for purposes of assisting executive bodies in formulating and implementing appropriate responses to the threat of human-induced climate change).

43. *See, e.g., Disasters and Climate Change*, *supra* note 3. For a quick example, droughts impact pre-existing food insecurities rather than create this insecurity. *See id.*

preconditions that shape the ways in which people are prepared for or respond to disasters.<sup>44</sup>

III. THE FEDERAL GOVERNMENT PROVIDES RELIABLE ASSISTANCE TO CITIZENS ON THE CONDITION THAT CERTAIN ELIGIBILITY REQUIREMENTS ARE MET

A. *United States Welfare Law Explicitly Excludes Noncitizens from Receiving Public Benefits*

A majority of individuals who make up vulnerable communities receive financial aid and assistance through federal public benefit<sup>45</sup> programs to combat disparities.<sup>46</sup> These programs provide ongoing financial assistance to address general welfare, such as food, housing, health care, and other basic living expenses.<sup>47</sup> However, availability and disbursement of federal public benefits are often dependent on qualifying citizenship status.<sup>48</sup> The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)<sup>49</sup> restricts access to federally-funded assistance by prohibiting individuals who are not “qualified” from being eligible for benefits.<sup>50</sup> Qualified individuals eligible for benefits include:

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44. Birkmann et al., *supra* note 42, at 2.

45. See 8 U.S.C. § 1611. The statute further defines federal public benefit as:

- (A) [A]ny grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
- (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

*Id.* § 1611(c)(1)(A)–(B).

46. See *generally Government Benefits*, USA GOV., <https://www.usa.gov/benefits#item-211654> [<https://perma.cc/WX8M-3ZG8>] (last visited Dec. 15, 2022) (displaying a variety of government benefits that are available for application).

47. *Id.*

48. *Id.*

49. Personal Responsibility and Work Opportunity Reconciliation (PRWORA) Act of 1996, Pub. L. No. 104-208, 110 Stat. 2105.

50. NAT'L HOUS. L. PROJECT, IMMIGRATION REQUIREMENTS: OTHER ASSISTANCE PROGRAMS FOR HOUSING AND HOMELESSNESS (ESG, CDBG, HOME, FEMA, CRF, AND ERAP) 1, 4, 8 (2021) [hereinafter IMMIGRATION REQUIREMENTS], [https://www.nhlp.org/wp-content/uploads/Immigration-Restrictions\\_Other-](https://www.nhlp.org/wp-content/uploads/Immigration-Restrictions_Other-)



(1) lawful permanent residents or LPRs (people with green cards), (2) refugees, people granted asylum or withholding of deportation/removal and conditional entrants, (3) people granted parole by the U.S. Department of Homeland Security (DHS) for a period of at least one year, (4) Cuban and Haitian entrants, (5) certain abused immigrants, their children, and/or their parents, and (6) certain survivors of trafficking.<sup>51</sup>

Individuals falling outside of the qualified category, like undocumented immigrants, are ineligible for assistance in the form of federal public benefits.<sup>52</sup> Evidently, programs such as Supplemental Nutrition Assistance Programs (SNAP), nonemergency Medicaid, Supplemental Security Income (SSI), and Temporary Assistance for Needy Families (TANF) are unavailable to undocumented immigrants and people in the United States on temporary visas.<sup>53</sup>

In addition to government programs that help pay for food, housing, health care, and other basic living expenses,<sup>54</sup> there are benefit and aid programs that help individuals who lose their jobs.<sup>55</sup> As with most general welfare programs, under current state and

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Programs.pdf [https://perma.cc/C3JG-97S5]. This application of this act is often guided by the U.S. Department of Health and Human Services (HHS). *Id.* at 5. PRWORA's primary targets are regular, on-going cash assistance programs funded by federal grants and budgeting. *Id.*

51. TANYA BRODER ET AL., NAT'L IMMIGR. L. CTR. OVERVIEW OF IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS 1, 3 (2022), <https://www.nilc.org/issues/economic-support/overview-immeligfedprograms> [https://perma.cc/R6CE-U23L]. Individuals who lawfully reside in the U.S. pursuant to a Compact of Free Association (COFA) are also considered qualified immigrants for purposes of Medicaid. *Id.*
52. *See id.* at 4. Non-qualified individuals include undocumented immigrants and other categories of people who are lawfully present in the United States. *Id.* at 3.
53. *Government Benefits*, *supra* note 46; *see also SNAP Eligibility*, USDA, <https://www.fns.usda.gov/snap/recipient/eligibility> [https://perma.cc/JDM7-TMK2] (last visited Dec. 15, 2022); MED. AND CHIP PAYMENT ACCESS COMM'N, FEDERAL REQUIREMENTS AND STATE OPTIONS: ELIGIBILITY 1, 3 (2017), <https://www.macpac.gov/wp-content/uploads/2017/03/Federal-Requirements-and-State-Options-Eligibility.pdf> [https://perma.cc/76WX-FRYS]; *Understanding Supplemental Security Income SSI Eligibility Requirements — 2022 Edition*, SOC. SEC., <https://www.ssa.gov/ssi/text-eligibility-ussi.htm> [https://perma.cc/K2VE-VB87] (last visited Dec. 15, 2022); *Temporary Assistance for Needy Families*, USA GOV., <https://www.benefits.gov/benefit/613> [https://perma.cc/W85M-MSDF] (last visited Dec. 15, 2022).
54. *Government Benefits*, *supra* note 46.
55. *See id.* Unemployment insurance programs pay money to people who lose their jobs through no fault of their own, so long as they meet their state's eligibility requirements. *Id.*

federal systems, undocumented immigrants are not eligible for unemployment benefits.<sup>56</sup> Generally, workers must have valid work authorization during the time they perform the work, at the time they apply for benefits, and throughout the period they receive benefits.<sup>57</sup> Work authorization is heavily dependent on tax deductions and a valid Social Security number, which undocumented immigrants do not have.<sup>58</sup> While unemployment benefits are not classified as public benefits,<sup>59</sup> the restrictions on access to funds are nearly identical to PRWORA restrictions,<sup>60</sup> preventing undocumented immigrants from receiving aid.<sup>61</sup>

*B. The Explicit Exclusion of Undocumented Immigrants from Federal Public Benefit Programs Leaves Their Communities Without Adequate Assistance*

While the United States welfare laws explicitly exclude undocumented immigrants from receiving assistance,<sup>62</sup> eligibility restrictions are occasionally relaxed, allowing those who would not normally qualify to access governmental assistance.<sup>63</sup> Programs necessary for the immediate protection of life and safety, such as short-term, non-cash, in-kind emergency disaster relief or assistance from nonprofit charitable organizations, are not subject to immigration restrictions.<sup>64</sup> Programs of this kind include crisis counseling and intervention programs, short-term shelter or housing assistance, soup kitchens and community food banks, and public health services treating and preventing diseases and injuries.<sup>65</sup> Even with occasional access to assistance available under these exceptions,<sup>66</sup> the piecemeal safety net designed to protect

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56. Rebecca Smith, *Immigrant Workers' Eligibility for Unemployment Insurance*, NAT'L EMP. L. PROJECT (Mar. 31, 2020), <https://www.nelp.org/publication/immigrant-workers-eligibility-unemployment-insurance/> [<https://perma.cc/BV4C-VUSZ>].

57. *Id.*

58. *Id.*

59. *See* 8 U.S.C. § 1611(c).

60. *See generally* Personal Responsibility and Work Opportunity Reconciliation (PRWORA) Act of 1996, Pub. L. No. 104-208, 110 Stat. 2105.

61. *Compare* Smith, *supra* note 56, with IMMIGRATION REQUIREMENTS, *supra* note 50, at 4.

62. *See* BRODER ET. AL., *supra* note 51, at 2–3.

63. *See id.* at 5–6.

64. *Id.*

65. *Id.* at 6 (citing Att'y Gen. Ord. No. 2353-2001, 66 Fed. Reg. 3616 (Jan. 16, 2001)).

66. *Id.*

undocumented immigrants and other non-qualified persons has gaping holes that are detrimental to these communities.<sup>67</sup>

One of the largest gaps in safeguarding communities from natural disasters is the federal exclusion of noncitizens from receiving aid from the Federal Emergency Management Agency (FEMA) and the Disaster Unemployment Assistance Program (DUAP).<sup>68</sup> To avoid this exclusion during states of emergency, the federal government has loosened its eligibility restrictions.<sup>69</sup> When the United States House of Representatives passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Pandemic Unemployment Assistance provision provided emergency unemployment assistance to workers who are typically excluded from regular state unemployment insurance.<sup>70</sup> Additionally, the Extended Family and Medical Leave provision introduced emergency paid sick leave to all eligible employees regardless of immigration status.<sup>71</sup> However, both provisions required workers to be authorized to work, meaning most undocumented workers were ineligible.<sup>72</sup> While these provisions appear to temporarily compensate for the preexisting gaps in federal assistance, immigration status turned out to be dispositive, preventing most undocumented immigrants from receiving any kind of COVID-related unemployment relief,<sup>73</sup> despite being on the frontlines of disaster.<sup>74</sup>

The deficiency in federal assistance forces undocumented immigrants and other non-qualified individuals to rely on programs that fall within PRWORA's limited eligibility exceptions,<sup>75</sup> such as

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67. See *infra* Section III.B and Part IV.

68. Méndez et al., *supra* note 32, at 56.

69. See, e.g., Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, § 2102(a)(3)(A)(i), 134 Stat. 281, 313 (2020).

70. NAT'L IMMIGR. L. CTR., UNDERSTANDING THE IMPACT OF KEY PROVISIONS OF COVID-19 RELIEF BILLS ON IMMIGRANT COMMUNITIES 8-9 (2020), <https://www.nilc.org/wp-content/uploads/2020/04/COVID19-relief-bills-understanding-key-provisions.pdf> [<https://perma.cc/J4J9-UBZL>]. This provision expanded benefits to independent contractors, freelancers, workers seeking part-time work, and workers who did not have enough work history to qualify. *Id.*

71. See *id.* at 7.

72. *Id.* at 8-9. This provision mirrors the restrictions on unemployment benefits. See *supra* text accompanying notes 53-57.

73. See NAT'L IMMIGR. L. CTR., *supra* note 70, at 1, 9.

74. See, e.g., Méndez et al., *supra* note 32, at 56 (describing the lack of healthcare access for high-risk undocumented immigrants in California during the COVID-19 pandemic).

75. See 8 U.S.C. § 1611(b).

non-profit charities and other 501(c)(3) organizations.<sup>76</sup> Even if a program's aid has been declared a federal public benefit under PRWORA, programs within the PRWORA eligibility exception allow undocumented immigrants to receive assistance regardless of status.<sup>77</sup> Nevertheless, these exceptions are merely short-term, maladaptive responses to disaster,<sup>78</sup> often leading state governments and local organizations to fill in the gaps to protect their own communities during times of crisis.<sup>79</sup> Several state governments and organizations have attempted to provide noncitizen coverage to make up for the lack within federally-funded programs,<sup>80</sup> however, these efforts come with limitations.<sup>81</sup>

Voluntary organizations have “long played a critical role in providing care to people affected by emergencies or disasters.”<sup>82</sup> Under PRWORA's exception, 501(c)(3) organizations may provide disaster relief to individuals who are needy or otherwise distressed because they are members of a charitable class.<sup>83</sup> Generally, the

76. See IMMIGRATION REQUIREMENTS, *supra* note 50, at 1; see also Kathryn Pitkin Derose et al., *Immigrants and Health Care: Sources of Vulnerability*, 26 HEALTH AFFS. 1258, 1259 (2007). United States' welfare law requires that state or local governments providing benefits to undocumented immigrants must pass a law to affirmatively establish those immigrants' eligibility. *Id.* These restrictions are aimed to discourage immigrants likely to seek public benefits from entering the United States, shifting responsibility away from the government. *Id.*

77. See IMMIGRATION REQUIREMENTS, *supra* note 50, at 4–6.

78. Even in states that have preserved eligibility within their safety-net programs, PRWORA has discouraged eligible immigrants from applying for or using publicly funded services. Derose et al., *supra* note 76, at 1263.

79. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-08-823, VOLUNTARY ORGANIZATIONS: FEMA SHOULD MORE FULLY ASSESS ORGANIZATION'S MASS CARE CAPABILITIES AND UPDATE THE RED CROSS ROLE IN CATASTROPHIC EVENTS 1, 7 (2008).

80. States either elect federal options to cover more eligible noncitizens or spend state funds to cover at least some of the immigrants who are ineligible for federally funded services. Broder et al., *supra* note 51. New York, Illinois, Massachusetts, and Washington use state funds to offer health coverage to low-income children irrespective of immigration status; California extends coverage to young adults until age twenty-six; and Illinois covers residents over age sixty-five regardless of immigration status. DEP'T OF HOMELAND SEC., COVID-19 VULNERABILITY BY IMMIGRATION STATUS 1, 9 (2021), [https://www.dhs.gov/sites/default/files/publications/immigration-statistics/research\\_reports/research\\_paper\\_covid-19\\_vulnerability\\_by\\_immigration\\_status\\_may\\_2021.pdf](https://www.dhs.gov/sites/default/files/publications/immigration-statistics/research_reports/research_paper_covid-19_vulnerability_by_immigration_status_may_2021.pdf) [<https://perma.cc/5R4L-98NL>].

81. See *supra* text accompanying notes 82–94.

82. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 79, at 1.

83. Lauren Simpson & Justin Zaremby, *501(c)(3) vs. COVID-19: A Primer on Disaster Relief*, JD SUPRA (Mar. 24, 2020), <https://www.jdsupra.com/legalnews/501-c-3-vs-covid-19-a-primer-on-78942> [<https://perma.cc/EDR5-X52Z>]. “A charitable class is a

standard applied to potential aid recipients is objective, and the only eligibility requirement is that the individual either lacks resources to obtain necessities or is otherwise in need or distressed.<sup>84</sup> Major volunteer organizations, such as American Red Cross and The Salvation Army, routinely assist disaster victims, providing mass sheltering, food, and other services.<sup>85</sup> However, Congress and other government agencies have concerns about the capabilities of these organizations when there is a large-scale disaster.<sup>86</sup> Current evidence suggests that without government assistance, “a worst-case large-scale disaster would overwhelm voluntary organizations’ current sheltering and feeding capabilities.”<sup>87</sup> These volunteer organizations are continuously challenged with increasing the number of trained personnel and identifying and dedicating financial resources for preparedness.<sup>88</sup> Additionally, while federal emergency preparedness grants exist as potential sources of funding,<sup>89</sup> volunteer organization officials report that they typically do not receive funding from these grants.<sup>90</sup> Even with independent funds raised immediately following a disaster,<sup>91</sup> the proceeds are used to directly provide relief services rather than for disaster preparedness and longer-term recovery efforts.<sup>92</sup> Unsurprisingly, smaller and more local assistance programs face identical challenges.<sup>93</sup>

In theory, the concurrent efforts of the federal government and these organizations should minimize any gaps in coverage to address all needs of disaster victims.<sup>94</sup> Unfortunately, due to shortages of personnel, funding, and assets, non-governmental organizations that

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group that is sufficiently (i) large or (ii) indefinite, such that providing aid to members of the class will benefit the community as a whole.” *Id.*

84. *See id.*

85. *See* U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 79, at 1.

86. *Id.* The magnitude of the September 11, 2001, terrorist attack and Hurricane Katrina, in particular, revealed the need to further build a national system of emergency management that better integrates voluntary agencies’ efforts and capabilities. *Id.*

87. *Id.* at 4.

88. *Id.* at 5.

89. Public donations are other sources of funding for voluntary organizations. *Id.*

90. *Id.*

91. *Id.* at 5–6.

92. *Id.* at 8.

93. *See, e.g.,* Méndez et al., *supra* note 32, at 56. In Northern California, advocates created a fund to aid undocumented immigrants who had lost their jobs, homes, or incurred health care costs from a wildfire. *Id.* While they were able to rapidly replicate funding, the local organizers had limited resources sufficient to handle the distribution of disaster relief services and struggled to assist the long waiting list of individuals requesting aid. *Id.*

94. *See* U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 79, at 1–4.

provide regular disaster relief cannot sufficiently meet every potential need during a catastrophic disaster.<sup>95</sup> The safety net that undocumented citizens must rely on for relief is hardly stable enough to keep these communities afloat.

#### IV. NEGLECT BY THE FEDERAL GOVERNMENT DURING TIMES OF CRISIS IS LIKELY TO EXACERBATE THE VULNERABILITIES OF UNDOCUMENTED IMMIGRANT COMMUNITIES

Immigrants are often identified as a vulnerable population,<sup>96</sup> facing additional stigma associated with their immigration status, differences in appearance, cultural practices, and language barriers.<sup>97</sup> PRWORA has contributed substantially to the increased stigmatization of certain immigrant groups by categorizing immigrants into “qualified” and “unqualified,” or “deserving” and “undeserving.”<sup>98</sup> Some believe that undocumented immigrants overburden established safety nets and take away from “deserving” families.<sup>99</sup> Despite the negative view of undocumented immigrants’ use of benefits, research suggests that these individuals in particular use relatively little health care.<sup>100</sup> Several studies have shown that the largest driver of immigration and where immigrants settle within the United States is the “availability of jobs, not health and social services.”<sup>101</sup>

Obvious deficiencies in post-disaster welfare protections<sup>102</sup> greatly diminish the ability of immigrant communities to remain self-sufficient, let alone survive, beyond initial climate shocks.<sup>103</sup> When life sustaining resources such as shelter, food, crisis counseling, and disaster management are available, they tend only to serve as

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95. *Id.* at 41.

96. Derose et al., *supra* note 76, at 1258. They are a group at increased risk for poor physical, psychological, and social health outcomes and inadequate health care. *Id.*

97. *See id.* at 1262. Immigrants regularly deal with political and social marginalization, as well. *Id.*

98. *Id.* at 1263.

99. *Id.* at 1262.

100. *Id.* “[T]he noncitizen population tends to be younger and healthier on average than the citizen population.” DEP’T OF HOMELAND SEC., *supra* note 80, at 1.

101. Derose et al., *supra* note 76, at 1265.

102. *See supra* Section III.B.

103. *See Méndez et al.*, *supra* note 32, at 57.

temporary boosters to these communities.<sup>104</sup> These transitory assistance programs hardly give these communities a chance to stabilize and progress, and the effects of inadequate support will become obvious in a matter of time.<sup>105</sup> As long as social protections exclude undocumented immigrants, their health, living environments, economic security, and development are at risk.<sup>106</sup>

While immigrants are relatively healthy upon arrival to the United States, their health seemingly deteriorates over time, likely due to adopting unhealthy habits and living in unhealthy environments.<sup>107</sup> Immigrants decline in health as they assimilate and adopt high-fat diets and processed foods,<sup>108</sup> thereby increasing their risk for “diabetes, cancer and heart disease.”<sup>109</sup> Disasters pose a greater threat to communities lacking access to health care, and acute illnesses occurring during a disaster often evolve into chronic health needs during the recovery stage.<sup>110</sup> Generally, undocumented immigrants do not seek health care due to restricted access<sup>111</sup> or fear of deportation.<sup>112</sup> Of the undocumented immigrants living in the United States, “65 percent . . . lack health insurance, compared with 32 percent of permanent residents[,]”<sup>113</sup> and this disparity in insurance extends to United States-born children of immigrants.<sup>114</sup> “Lack of regular health coverage and uncertain access to care creates an environment [that favors] catastrophic and hospital-based care over ambulatory and primary care” at the expense of the federal government.<sup>115</sup> “[C]ontinuing to restrict [undocumented] immigrants’

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104. See *Citizenship and Immigration Status Requirements for Federal Public Benefits*, FEMA, <https://www.fema.gov/assistance/individual/program/citizenship-immigration-status> [<https://perma.cc/WA4C-MTJM>] (Oct. 11, 2022).

105. See *infra* text accompanying notes 107–46.

106. See *infra* text accompanying notes 113–46.

107. Derose et al., *supra* note 76, at 1263.

108. Dan Gordon, *Life in America: Hazardous to Immigrants' Health?*, UCLA: NEWSROOM (Dec. 1, 2014), <https://newsroom.ucla.edu/stories/life-in-america-hazardous-to-immigrants-health> [<https://perma.cc/22JQ-8DCX>] (“[I]mmigrants with minimal financial means face considerable challenges to eating well. Education alone does not work in a community that does not have the ability to access healthy food.”).

109. *Id.*

110. Méndez et al., *supra* note 32, at 59.

111. Derose et al., *supra* note 76, at 1258.

112. Méndez et al., *supra* note 32, at 52.

113. Derose et al., *supra* note 76, at 1260.

114. *Id.* (“U.S.-born children with noncitizen or naturalized parents also have lower rates of health insurance . . . than U.S.-born children with U.S.-born parents.”).

115. Dhruv Khullar & Dave A. Chokshi, *Immigrant Health, Value-Based Care, and Emergency Medicaid Reform*, 321 JAMA 928, 928 (2019). Through the Emergency Medicaid program, federal law requires hospitals to treat emergent conditions, or

access to Medicaid for primary care, while allowing their access to Medicaid for emergency services, creates perverse incentives for providers and patients alike.”<sup>116</sup>

The impacts of poor healthcare exceed the scope of general health and well-being and bleed into other aspects of these communities' livelihoods.<sup>117</sup> Due to the lack of access to healthcare, undocumented immigrants are “more likely to feel [that] they have to work even when [they are] sick.”<sup>118</sup> They are equally likely to be exposed to high-risk environments at work and “are overrepresented in high-risk occupations,”<sup>119</sup> yet these positions have slim “flexibility to take time off to seek healthcare.”<sup>120</sup> In situations where poor health arises, undocumented immigrants will continue to keep working in order to survive—they “depend more heavily than U.S. citizens on working to survive because they are not eligible for federal stimulus checks or unemployment benefits.”<sup>121</sup> Economic insecurity among undocumented immigrants due to labor exploitation and exclusion from social safety-net programs intensifies when workers most exposed to disasters are denied access to emergency aid.<sup>122</sup>

Despite increased exposure to hazardous conditions, many of these workers have incomes that regularly fall below the federal poverty line.<sup>123</sup> Income limitations push undocumented immigrant communities to cluster “in areas where it is difficult to prepare for and recover from disasters.”<sup>124</sup> More dangerous areas are less expensive and simply more available.<sup>125</sup> Just by virtue of where they live, these individuals are more likely to endure high temperatures, droughts, and other extreme weather.<sup>126</sup> Extreme weather events associated with climate change also threaten the physical

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conditions “in which the absence of immediate medical attention could place a patient's health in serious jeopardy.” *Id.*

116. Derose et al., *supra* note 76, at 1265.

117. *Id.* at 1264.

118. DEP'T OF HOMELAND SEC., *supra* note 80, at 18.

119. *Id.* at 10. (“[F]oreign-born persons are up to three times more likely than the U.S.-born to be essential workers and have above-average participation in essential sectors such as agriculture, food, distribution, and healthcare.”).

120. *Id.* at 18.

121. *Id.*

122. Méndez et al., *supra* note 32, at 57.

123. See DEP'T OF HOMELAND SEC., *supra* note 80, at 18.

124. Méndez et al., *supra* note 32, at 57.

125. SAMHSA, *supra* note 25, at 7.

126. *Id.*



infrastructure of their homes.<sup>127</sup> People of low socioeconomic status, like undocumented immigrants, become more vulnerable in a disaster as they often live in homes with lower quality construction, older homes, or mobile homes.<sup>128</sup> However, the home's structural instability may be of little value compared to the financial losses immigrants suffer after a disaster.<sup>129</sup> Low-income families are more likely to have their savings concentrated in their homes, while financially secure people are likely to have their savings in financial institutions and various places, leaving their wealth better protected from natural disasters.<sup>130</sup> One devastating hurricane could wipe out the savings of an already vulnerable community, eliminating the chance for economic stability in the blink of a hurricane eye.

Aside from workplace or residential-related environmental exposure, the impact of climate change on natural resources further damages the health and livelihood of vulnerable communities.<sup>131</sup> Communities that are more vulnerable to food insecurity may experience conflict when food shortages occur due to low agricultural productivity and scarcity of resources associated with climate change.<sup>132</sup> This insecurity is further exacerbated by the unavailability of resources resulting from increased market prices, the inability to generate more income, and exclusion from food assistance programs.<sup>133</sup> The Supplemental Nutrition Assistance

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127. *See id.* "Disruptions caused by natural hazards, as well as poor maintenance . . . of infrastructure," costs households and businesses millions of dollars a year. *3 Things You Need to Know About Adaptation and Resilience*, WORLD BANK (June 1, 2020) [hereinafter WORLD BANK I], <https://www.worldbank.org/en/topic/climatechange/brief/3-things-you-need-to-know-about-adaptation-and-resilience> [https://perma.cc/ARC8-EF3T]. "[I]mpacts range from businesses unable to keep factories running or process payments, to people unable to go to work, send children to school, or get to a hospital." *Id.*

128. SAMHSA, *supra* note 25, at 7. "[P]roperty insurance coverage is . . . limited in many low- and middle-income settings." Samuel Sellers et al., *supra* note 13, at 2

129. *See* SAMHSA, *supra* note 25, at 9.

130. *Id.* This difference, in part, may be why natural disasters alone push twenty-six million more people around the world into poverty each year. *See id.* (citing *Breaking the Link Between Extreme Weather and Extreme Poverty*, WORLD BANK (Nov. 14, 2016) [hereinafter WORLD BANK II], <https://www.worldbank.org/en/news/feature/2016/11/14/breaking-the-link-between-extreme-weather-and-extreme-poverty> [https://perma.cc/D9NG-X3GQ]).

131. Sellers et al., *supra* note 13, at 1.

132. *Id.* at 2.

133. *Id.* at 5.

Program (SNAP)<sup>134</sup> is a federal public benefit program that provides benefits to supplement the food budgets of needy families; it is often the first line of defense against hunger.<sup>135</sup> Despite this program's critical role in putting food on the table, undocumented immigrants are ineligible for SNAP.<sup>136</sup> Food hardship becomes unnecessarily commonplace, and the long-term consequences may damage more than just those facing food and water insecurities<sup>137</sup>—undernutrition and malnutrition of women and children can weaken governance capacity and economic growth, leading to poorer human capital outcomes.<sup>138</sup> Poor health throughout life can impact educational attainment, affecting both employment opportunities and further human innovation.<sup>139</sup> “Disasters force poor [noncitizen] households to make choices that have detrimental long-term effects, such as withdrawing a child from school or cutting health care expenses.”<sup>140</sup> Evidently, prioritizing and maintaining a single area of one's livelihood requires other areas of equal importance to be put on the back burner. Surviving this way is unsustainable yet unavoidable—consequently, undocumented immigrant communities will slowly begin to disintegrate.

Disasters precipitate a cascade of negative consequences, leading to lost lives, destroyed assets and shelters, damaged livelihoods, and interrupted access to services, all of which contribute to deepening poverty and vulnerability.<sup>141</sup> Some economic and noneconomic loss and damage is unavoidable if a society has reached “its adaptation limits or does not implement adaptation optimally.”<sup>142</sup> Securing good

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134. *Supplemental Nutrition Assistance Program (SNAP)*, USDA, <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program> [<https://perma.cc/G6CF-3JH2>] (last visited Dec. 15, 2022).

135. Jordan Baker, *SNAP Participation Reaches Historic Levels in Maryland*, MD. HUNGER SOL. (Sept. 11, 2020), <https://www.mdhungersolutions.org/snap-participation-reaches-historic-levels-in-maryland/> [<https://perma.cc/TLD7-T7M7>].

136. *SNAP Eligibility*, *supra* note 53. In accordance with PRWORA restrictions and the Food and Nutrition Act of 2008, SNAP benefits are limited to U.S. citizens and certain lawfully present non-citizens. *Id.*; see also Personal Responsibility and Work Opportunity Reconciliation (PRWORA) Act of 1996, Pub. L. No. 104-208, 110 Stat. 2105.

137. See Sellers et al., *supra* note 13, at 3.

138. *Id.*

139. *Id.*

140. SAMHSA, *supra* note 25, at 12 (citing STÉPHANE HALLEGATTE ET AL., THE WORLD BANK, UNBREAKABLE: BUILDING THE RESILIENCE OF THE POOR IN THE FACE OF NATURAL DISASTERS 4 (2017)).

141. BARRETT ET AL., *supra* note 1, at 7.

142. *Id.* at 12.

development outcomes, such as safer, better-off communities, requires investments in the people, businesses, and communities facing the impacts of a changing climate.<sup>143</sup> Therefore, “adaptation should include measures to reduce poverty and increase access to resources thereby reducing vulnerability,”<sup>144</sup> but as previously discussed, these measures are insufficient.<sup>145</sup> As the frequency and intensity of natural disasters increase, the current structure surrounding noncitizen welfare is bound to send these already struggling communities into a crumbling state of existence.<sup>146</sup>

V. UNDOCUMENTED IMMIGRANTS SHOULD BE INCLUDED IN FEDERAL PUBLIC BENEFITS PROGRAMS TO PROPERLY PROTECT AND PRESERVE THESE EVOLVING COMMUNITIES

Despite national policy concerns regarding welfare and immigration,<sup>147</sup> undocumented immigrants should be included in federal public benefit programs. The United States’ immigration policy is rooted in self-sufficiency, expecting undocumented immigrants within the nation’s borders to rely on their own capabilities and resources to meet their needs.<sup>148</sup> While there is a compelling government interest to ensure immigrants are self-reliant in accordance with this policy,<sup>149</sup> failing to consider the lasting impacts on these communities is equally detrimental to the overall functionality of the United States as it is to immigrant communities.<sup>150</sup> Neglect of these communities ultimately leads to neglect of lawfully residing citizens.<sup>151</sup> If immigrants are

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143. WORLD BANK I, *supra* note 127.

144. LYSTER, *supra* note 28, at 157. “[T]here is substantial overlap between social protection and climate adaptation interventions.” BARRETT ET AL., *supra* note 1, at 25.

145. *See supra* Section III.B.

146. *See supra* Part IV.

147. *See* 8 U.S.C. § 1601.

148. *See id.* § 1601(2). There is “a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.” *Id.* § 1601(6). This policy also serves to avoid burdening the public benefits system. *Id.* § 1601(4)–(5).

149. *Id.* § 1601(2), (6).

150. *See infra* Section V.B.

151. *See* DEP’T OF HOMELAND SEC., *supra* note 80, at 3. Numerous studies have documented how policy changes exacerbated noncitizen’s fears relating to healthcare access, particularly the public charge rule penalizing access to public benefits for certain noncitizen groups. *Id.* at 9. Although this rule applies to only certain groups, the rule has resulted in lower healthcare and benefits access by noncitizens of lawful and eligible statuses. *Id.*

involuntarily displaced, receiving areas and new destinations may not always be equipped with well-developed safety nets, culturally competent providers, and immigrant advocacy or community-based organizations,<sup>152</sup> placing additional stress on residents of those communities.<sup>153</sup> Rapid and large scale migration can destabilize receiving societies due to distrust of newcomers, resentment of their resource use, or cultural and ethnic differences between migrants and established populations.<sup>154</sup> Even so, community-wide disapproval and unrest should not prevent the proper allocation of resources, as many states and localities recognize that they cannot protect the health and safety of their residents unless everyone in the community has access to healthcare, safe working conditions, and economic support.<sup>155</sup> Ultimately, the government cannot adequately protect the health and safety of lawfully residing citizens unless the government protects all individuals residing in the United States, lawfully or unlawfully.

A. *Legislation is Needed to Protect Undocumented Immigrants Considering They Make Up a Significant Portion of the United States Immigrant Population*

Unauthorized immigrants in the United States represent a sizeable and rapidly growing group, making up approximately forty-one percent of the noncitizen population.<sup>156</sup> In 2004, twelve million undocumented immigrants were estimated to be living in the United States—this number has continued to grow.<sup>157</sup> The noticeable presence of immigrants has led United States citizens to view immigration as a “national rather than local issue, suggesting a federal role in improving services for this population.”<sup>158</sup> When the government offered short-term disaster assistance and other relief to individuals typically excluded from federal economic impact payments and unemployment insurance programs during the

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152. Derosé et al., *supra* note 76, at 1262.

153. Sellers et al., *supra* note 13, at 4.

154. *Id.*

155. BRODER ET AL., *supra* note 51, at 16. This recognition became apparent at the start of the COVID-19 pandemic. *See id.*

156. DEP'T OF HOMELAND SEC., *supra* note 80, at 3. “Nearly one in ten U.S. residents (9 percent) is a noncitizen.” *Id.*

157. Derosé et al., *supra* note 76, at 1259. (“[B]ecause current immigration policy places more restrictions and delays than in the past on immigrants' ability to adjust their status following illegal immigration, the number of undocumented immigrants is likely to continue to grow.”).

158. *Id.* at 1265.

pandemic,<sup>159</sup> “these efforts . . . were not sufficient to meet the need[s] [of undocumented immigrants] or to address the longstanding . . . disparities in access to care [and] support.”<sup>160</sup>

While the choices surrounding public benefits are political in nature,<sup>161</sup> these choices are “disempowering immigrant communities by withholding vital government protection and resources.”<sup>162</sup> Including undocumented immigrants in federally-funded welfare assistance programs is a proactive measure to halt the already-begun deterioration and destruction of these communities,<sup>163</sup> ultimately advancing human development. “The factors that render immigrants vulnerable to [disaster] can be modified in part through policies that are widely relevant to disadvantaged populations, such as policies related to living wages, access to education, decent housing, and safe jobs.”<sup>164</sup> Legislation intentionally designed to protect these communities would codify proper financial assistance, creating a safeguard for those most adversely affected by climate change and its pending disasters.<sup>165</sup> Dedicated funding could help safeguard domestic workers, farmworkers, and other low-wage, predominately immigrant, outdoor workers directly impacted by climate change disasters.<sup>166</sup> Additionally, strengthening the safety net and public health systems would allow these communities an opportunity to

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159. See, e.g., Amy Yee, *Undocumented Workers Who Power New York's Economy Finally Get Pandemic Aid*, BLOOMBERG (Sept. 23, 2021, 8:53 PM), <https://www.bloomberg.com/news/articles/2021-09-23/the-excluded-workers-fund-gets-undocumented-workers-2-1-billion-in-pandemic-aid> [https://perma.cc/RYP6-LHGB].

160. BRODER ET AL., *supra* note 51, at 16.

161. See, e.g., Ben Gitis & Laura Collins, *The Budgetary and Economic Costs of Addressing Unauthorized Immigration: Alternative Strategies*, AM. ACTION F. (Mar. 6, 2015), <https://www.americanactionforum.org/research/the-budgetary-and-economic-costs-of-addressing-unauthorized-immigration-alt/> [https://perma.cc/V2ZA-DJZL] (“Immigration reform is a multi-faceted issue, encompassing legal issues, security issues, employer issues, and social issues. But at the heart of immigration reform are a number of economic policy issues . . .”).

162. Méndez et al., *supra* note 32, at 59.

163. *Id.* (“Disasters pose a greater threat to communities with limited resources . . . State intervention is essential to ensure that these events do not create or exacerbate existing disparities in health and health care access.”).

164. Derosé et al., *supra* note 76, at 1264.

165. See BRODER ET AL., *supra* note 51, at 1–2 (discussing restrictive policies applied to immigrant communities).

166. See *id.* at 16 (discussing next steps and future goals for policy reform).

develop health-promoting capabilities and increase their ability to maintain self-sufficiency.<sup>167</sup>

*B. The Economic Implications of Including Noncitizens in Public Benefit Programs are Minimal Compared to the Financial Risks and Erosion of Human Development Associated with Disaster*

Over time, natural disasters have the potential to not only drive vulnerable noncitizen households into long-term poverty<sup>168</sup> but also severely impact the United States economy.<sup>169</sup> To avoid chronic poverty, noncitizens may cut consumption and preserve physical assets, which will “probabilistically reduce the human and economic capabilities of the succeeding generations”—generations that are United-States-born and legal citizens.<sup>170</sup> Unresolved food insecurities and undernutrition, exacerbated by disasters and unreliable food assistance programs,<sup>171</sup> deepen the “intergenerational transmission of poverty as children and grandchildren of initially poor and vulnerable households suffer a long term deterioration in their realized levels of human capital.”<sup>172</sup> In principle, cash or in-kind transfer programs that fall under PRWORA’s exception help avoid human capital deterioration by eliminating consumption-based poverty in the short term.<sup>173</sup> “Over the longer term, [however,] the extent and depth of poverty drifts up over time,”<sup>174</sup> as those who have collapsed because of climate shocks become eligible for in-kind transfers, reducing the

167. See Derose et al., *supra* note 76, at 1265. A way this could be accomplished is by “expanding insurance coverage to enable immigrants to make better use of health care services.” *Id.*

168. Michael R. Carter & Sarah A. Janzen, *Social Protection in the Face of Climate Change: Targeting Principles and Financing Mechanisms*, 23 ENV’T & DEV. ECON. 369, 370 (2018).

169. Diana Adame, *Top 10 Disaster Relief Nonprofits*, THE BORGAN PROJECT (Sept. 30, 2018), <https://borgenproject.org/top-10-disaster-relief-nonprofits/> [<https://perma.cc/9B2D-EV9Y>] (“Natural disasters force 26 million people into poverty annually and can erase years of poverty reduction progress.”); see also WORLD BANK II, *supra* note 130.

170. Carter & Janzen, *supra* note 168, at 370.

171. See *supra* notes 132–38 and accompanying text.

172. See *supra* notes 137–41 and accompanying text. “Human capital is the economic value of the abilities and qualities of labor that influence productivity, such as education” and health. Kimberly Amadeo, *What Is Human Capital?*, THE BALANCE (Feb. 17, 2022), <https://www.thebalance.com/human-capital-definition-examples-impact-4173516> [<https://perma.cc/NM83-ZNXD>].

173. Carter & Janzen, *supra* note 168, at 379.

174. *Id.*

amount available for other indigent households.<sup>175</sup> Excluding noncitizens from federal public benefit programs merely stagnates economic growth and human development.<sup>176</sup> To keep the number of communities without basic necessities from rising, the tradeoff becomes protecting the wellbeing of those already without as opposed to merely focusing efforts on unaffected populations.<sup>177</sup> Targeted social protection policies that consider long-term poverty dynamics, such as public benefit programs, could minimize unnecessary poverty in future generations and lead to greater resiliency.<sup>178</sup> When countries have the proper tools to prepare for and respond to environmental risks, they build resilience at all levels of the economy.<sup>179</sup>

A failure to assess the vulnerabilities of undocumented immigrants conveys the message that neither the political system nor the legal system bears any responsibility for causing these disparities and destruction of communities.<sup>180</sup> Neglect of undocumented immigrant communities already present in the United States directly translates to neglect of lawfully residing citizens<sup>181</sup> and the nation's economy.<sup>182</sup> If noncitizen communities without substantial resources cease to exist after a series of large scale disasters, the economic costs are equivalent to the deportation of all undocumented immigrants from the United States.<sup>183</sup> Industries that rely heavily on

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175. *Id.*

176. *See supra* Section III.B.

177. *See* Carter & Janzen, *supra* note 168, at 386.

178. *Id.* at 370.

179. Juergen Voegelé, *Invest in Resilience, Invest in People*, WORLD BANK: BLOGS (Oct. 10, 2019), <https://blogs.worldbank.org/climatechange/invest-resilience-invest-people> [<https://perma.cc/MU96-WZAQ>]. At a macro level, a country in its entirety is better prepared for shocks; at the meso level, critical supply chains and infrastructure get back into action more quickly; and at the micro level, households, assets, and livelihoods are protected. *Id.*

180. *See* Lucy A. Williams, *Welfare and Legal Entitlements: The Social Roots of Poverty*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 569, 569 (David Kairys ed., Basic Books 3rd ed., 1998). The positions surrounding welfare are (1) “welfare should be a national government responsibility,” (2) “welfare should be a state government responsibility” and each state is free to design its own qualifications and levels of support, (3) “welfare should be the responsibility of charities, churches, and other non-profit groups,” and (4) “there should be no welfare[—]individuals should take care of themselves with the help of their families, friends, and neighbors.” *How Welfare Began in the United States*, CONST. RTS. FOUND., <https://www.crf-usa.org/bill-of-rights-in-action/bria-14-3-a-how-welfare-began-in-the-united-states.html> [<https://perma.cc/BH23-QA6C>] (last visited Dec. 15, 2022).

181. *See supra* text accompanying notes 151–54.

182. *See* Gitis & Collins, *supra* note 161.

183. *Id.*

undocumented labor would be devastated,<sup>184</sup> and as the United States population and workforce ages, more pressure will be put on Social Security and Medicare as older workers retire.<sup>185</sup> The economic impact of this dramatic drop in the workforce would profoundly affect GDP, the deficit, and the housing market.<sup>186</sup> Despite being unable to collect any federal public benefits, at least fifty percent of undocumented immigrants pay federal taxes.<sup>187</sup> Because they use very little social services, the loss in tax revenue associated with their absence would cause the federal deficit to grow,<sup>188</sup> making it difficult to sustain preexisting federal public benefit programs for lawfully-residing citizens.<sup>189</sup> The absence of consistent welfare assistance available to undocumented immigrants would invoke an increased emergence of programs falling under the PRWORA eligibility exceptions<sup>190</sup> as the livelihoods and well-being of communities rapidly decline. Undoubtedly, the costs to develop and maintain such programs may potentially exceed any costs the government would incur by including noncitizens in federal public benefit programs.<sup>191</sup>

Regardless of political position, the dire human and economic consequences speak to the necessity of building resilience. As President Jim Yong Kim of World Bank Group<sup>192</sup> said, “[b]uilding

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184. *Id.*

185. *Id.*

186. *Id.* Removing all undocumented immigrants would reduce the U.S. labor force by 6.4%. *Id.* (citing BIPARTISAN POL’Y CTR., IMMIGRATION REFORM: IMPLICATIONS FOR GROWTH, BUDGETS, AND HOUSING 1, 15 (2013), [https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2019/03/BPC\\_Immigration\\_Economic\\_Impact.pdf](https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2019/03/BPC_Immigration_Economic_Impact.pdf) [<https://perma.cc/HS3Q-GF4J>]). As a result, twenty-six years from now, “the economy would be 5.7 percent smaller than it would be if the government did not remove all undocumented immigrants.” *Id.* (citing BIPARTISAN POL’Y CTR., *supra*, at 17). Even housing would suffer, as “[r]esidential construction spending would decline by over \$100 billion per year because removing all present and future undocumented immigrants would cause a large decline in the U.S. population.” *Id.* (citing BIPARTISAN POL’Y CTR., *supra*, at 19).

187. *Id.*

188. “According to the Bipartisan Policy Center removing all undocumented immigrants would result in a deficit increase of \$800 billion over 20 years.” *Id.* (citing BIPARTISAN POL’Y CTR., *supra* note 186, at 22–23).

189. *Id.*

190. *See supra* text accompanying notes 59–60.

191. Poor health and unsafe living environments exacerbated by natural disasters simply transforms any lack of aid into aid necessary for the protection of life and safety for noncitizen communities. *See supra* Part IV.

192. “The World Bank Group is the biggest multilateral funder of climate investments in developing countries.” *Climate Change*, WORLD BANK, <https://www.worldbank.org/en/topic/climatechange> [<https://perma.cc/S6GY-96HP>] (last visited Dec. 15, 2022).



resilience not only makes economic sense, it is a moral imperative.”<sup>193</sup> It should be understood that “our lives, health, and economic security are interconnected,” regardless of citizenship in the United States.<sup>194</sup> All people, “regardless of country, creed, or culture deserve and need a right to live in a self-sufficient environment.”<sup>195</sup> The ability to maintain oneself without outside aid and provide for one’s own needs only requires that the government enable the development of self-sufficiency, rather than provide everything necessary for the self-sufficiency of noncitizens.<sup>196</sup> The current eligibility requirements under PRWORA are unreasonable restrictions on life-saving practices for noncitizen families.<sup>197</sup> While welfare availability will not completely cure noncitizen disparities, inclusivity in public benefit programs will remove substantial barriers to establishing and maintaining self-sufficiency.<sup>198</sup> Providing general welfare assistance to accommodate healthcare access, stable housing, and food security would allow noncitizen families to focus their efforts on preparing for a disaster without giving up essential parts of their livelihoods.<sup>199</sup> The inability to establish self-sufficiency, especially during times of crisis, is a national concern requiring immediate resolution.<sup>200</sup> Addressing the vulnerability of these communities is “increasingly urgent [as] the risks of wildfires, drought, extreme weather, and infectious diseases associated with climate change are materializing sooner than projected.”<sup>201</sup> As one disaster quickly fades, the next one hits, requiring recovery efforts to move faster and act ahead of time.<sup>202</sup> There should be no leniency

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193. Adame, *supra* note 169.

194. BRODER ET AL., *supra* note 51, at 16.

195. Haley Palfreyman Jankowski, *Visualizing an International Human Right to Self-Sufficiency*, 24 MICH. ST. INT’L L. REV. 111, 113 (2015). “[T]he right to live in an environment of self-sufficiency finds its basis in several recognized international human rights, such as ‘the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care.’” *Id.* at 122.

196. *Id.* at 123–24.

197. *See supra* text accompanying notes 49–52.

198. However minor this solution may appear, providing noncitizens a greater opportunity to become self-sufficient works directly in line with United States immigration policy. *See supra* text accompanying notes 147–50.

199. *See supra* text accompanying notes 163–67.

200. *See* Jankowski, *supra* note 195, at 122.

201. Méndez et al., *supra* note 32, at 52.

202. Dan Charles, *Our Future on a Hotter Planet Means More Climate Disasters Happening Simultaneously*, NAT’L PUB. RADIO (Sept. 2, 2021), <https://www.npr.org/2021/09/02/1033054816/our-future-on-a-hotter-planet-means-more-climate-disasters-happening-simultaneous> [<https://perma.cc/RXT9-AKCL>].

offered for mediocre emergency management, as the effects of extreme weather events are not hypothetical or problems for the next decade. The impacts of climate change have made their presence very clear,<sup>203</sup> and we, as a nation, are becoming more vulnerable as weather events intensify and the government's responses fail.<sup>204</sup>

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203. *See, e.g., id.*

204. *See supra* Part IV.

