

Just Relocation: Climate Change and the Opportunities and Limitations of the Uniform Relocation Act

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ABSTRACT

As climate change increases the severity and frequency of hurricanes, floods, wildfires, and other “natural” disasters, more people are being temporarily or permanently displaced from their homes. In 2022, the Census Bureau estimated that 3.4 million adults were temporarily or permanently displaced in the United States because of these events. Despite widespread and persistent rates of internal displacement in the United States over the last decade, there is no federal law that guarantees financial or technical relocation assistance to those who are displaced. While the Federal Emergency Management Agency (“FEMA”) has recently expanded the amount and types of federal assistance available to disaster survivors, that assistance has historically been inflexible, limited, or inaccessible for those who need it most.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (“URA”) is the only federal law in the United States that requires federal agencies to provide wrap-around services to displaced people. Despite its broad purpose, courts have consistently narrowed the law’s scope to apply only when federal funding is used to acquire, rehabilitate, or demolish a property or business to provide a public benefit. In this Article, we review the promise and limitations of the URA to affirm and fulfill the rights of people displaced by disasters. To identify key protection gaps, we compare the benefits and duties prescribed under the URA to the rights and obligations under the 1992 United Nations Guiding Principles on Internal Displacement, and the right of internally displaced peoples (“IDPs”) to achieve “durable solutions”: safe return, local reintegration, or resettlement elsewhere. Our goal is to provide a comprehensive, up-to-date guide on the URA’s applicability for those who assist disaster survivors, while assessing persistent protection gaps that the URA could address if applied more broadly.

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INTRODUCTION

Environmental disasters are driving significant internal displacement in the United States.¹ The Census Bureau estimates that in the last year, nearly 2.5 million people were displaced by a “natural” disaster.² When people are forcibly displaced, whether by conflict or a disaster, they can be exposed to other hardships and human rights violations, including family separation and death, discrimination, property loss, trauma, and ongoing forced displacements.³ Those who are permanently displaced may struggle to reestablish themselves and regain or find new employment or continue with their education in the wake of disasters.⁴ These impacts are disproportionately borne by groups with preexisting vulnerabilities, including low-wealth and low-income households,⁵ racial, ethnic and linguistic minorities,⁶ people experiencing homelessness,⁷ people with disabilities,⁸ Indigenous communities,⁹ and members of the

1. See generally *Household Pulse Survey*, Displaced in Last Year by Natural Disaster, U.S. CENSUS BUREAU, <https://www.census.gov/data-tools/demo/hhp/#/?measures=DISPLACED&periodSelector=53> (last visited May 14, 2024); see also Justin Klawans, *Natural Disasters Displaced More Than 3 Million Americans in 2022*, U.S. Census Says, THE WEEK (Feb. 12, 2023), <https://theweek.com/natural-disasters/1020918/natural-disasters-displaced-more-than-3-million-americans-in-2022-us> [<https://perma.cc/2T3S-L5GA>].

2. *Household Pulse Survey: Phase 4.0 Cycle 01 Household Pulse Survey: January 9 – February 5*, Table 1. Displacement from Home Because of Natural Disaster, by Select Characteristics, U.S. CENSUS BUREAU, https://www2.census.gov/programs-surveys/demo/tables/hhp/2024/cycle01/NaturalDisaster1_cycle01.xlsx [<https://perma.cc/WXL6-ZKUW>] (last visited Mar. 5, 2024). It is unclear from these data which proportion of households were forcibly displaced by the disaster, or voluntarily chose to relocate in response to the disaster.

3. Elizabeth Ferris, *Displacement, Natural Disasters, and Human Rights*, BROOKINGS INST. (Oct. 17, 2008), <https://www.brookings.edu/articles/displacement-natural-disasters-and-human-rights/> [<https://perma.cc/RJ8S-FXSZ>].

4. See Jeffrey A. Groen & Anne E. Polivka, *The Effect of Hurricane Katrina on the Labor Market Outcomes of Evacuees*, 98 AM. ECON. REV. 43, 47–48 (2008) (tracing the greater challenge that permanently displaced persons faced in obtaining employment post-Katrina compared to those that returned to their communities following a temporary displacement).

5. *New Data from Household Pulse Survey Suggest Disparities Among Households Displaced by Disasters*, NAT'L LOW INCOME HOUSING COALITION (Jan. 17, 2023), <https://nlihc.org/resource/new-data-household-pulse-survey-suggest-disparities-among-households-displaced-disasters> [<https://perma.cc/AXM4-YZ43>].

6. *Id.*

7. *Homelessness and Climate Change: A Roundup of Resources for Communities Before, During, and After Disasters*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (June 13, 2023) <https://www.usich.gov/guidance-reports-data/federal-guidance-resources/homelessness-and-climate-change-roundup-resources> [<https://perma.cc/7EY7-ZW89>] (“[P]eople experiencing homelessness may not receive disaster communications, may be left out of evacuation plans, and may not be welcome or appropriately cared for in disaster shelters. . . . people experiencing *unsheltered* homelessness are particularly vulnerable criminalization of homelessness can worsen these impacts by displacing people to more environmentally toxic areas.”).

8. Thomas Frank, *Majority of Disabled People Never Go Home After Disasters*, E&E NEWS (Jan. 6, 2023, 06:29 AM), <https://www.eenews.net/articles/majority-of-disabled-people-never-go-home-after-disasters/> [<https://perma.cc/C36N-XPSX>] (summarizing Census Bureau data showing that “people with disabilities are far more likely than anyone else to face major hardships including displacement from their homes due to a major disaster”).

9. See, e.g., REDESCA’s *Visit to Louisiana and Alaska, USA: It is urgent to address the impact of climate emergency on indigenous peoples’ human rights*, INTER-AM. COMM. HUM. RTS. (Aug. 28, 2023), https://www.oas.org/en/IACHR/jsForm/?File=en/iachr/media_center/PReleases/2023/196.asp [<https://perma.cc/9RVU-SR77>].

LGBTQIA+ community.¹⁰ Efforts to promote equitable disaster preparedness and adaptation seek to minimize these disproportionate exposures and burdens as much as possible.

Government responses to environmental disasters can further exacerbate these burdens. Notably, federal assistance is not intended to make disaster survivors “whole,” but rather to “alleviate” any immediate damage or hardship caused by the disaster.¹¹ However, a series of studies, including studies by federal entities, have shown that federal disaster assistance can exacerbate racial economic inequality, independent of the effects of the disaster itself.¹² Recent federal reforms have sought to promote more equitable outcomes in disaster assistance,¹³ but as of this writing, there is limited public data on whether those reforms have produced meaningful changes in equity outcomes.

To identify persistent protection gaps, we compare specific components of the current federal disaster framework to the relevant rights and obligations affirmed under international human rights law. While many international and regional human rights frameworks apply in the climate change and disaster contexts,¹⁴ in this Article we focus on the United Nations Guiding Principles on Internal Displacement (“Guiding Principles”).¹⁵ The Guiding Principles enumerate the rights of people internally displaced by disaster

10. *LGBTQIA+ Communities and Disasters*, CTR. FOR DISASTER PHILANTHROPY, <https://disasterphilanthropy.org/resources/lgbtqia-communities-and-disasters/> [<https://perma.cc/WGL3-EUKF>] (last visited Mar. 7, 2024).

11. See 44 C.F.R. § 206.32(f).

12. See, e.g., Christopher T. Emrich, Sanam K. Aksha & Yao Zhou, *Assessing Distributive Inequities in FEMA’s Disaster Recovery Assistance Fund Allocation*, 74 INT’L J. DISASTER RISK REDUCTION 1, 1 (2022) (analyzing assistance provided to individuals and households between 2010 and 2018, finding “race/ethnicity-related variables [are] the most frequent (regularly negative) influence on recovery fund receipt”); Individual Assistance Program Equity, 89 Fed. Reg. 3990, 3994 (Jan. 22, 2024) (codified at 44 C.F.R. 206) (reporting FEMA’s own findings that lower income households receive lower home repair/replacement awards because “they had lower Real Property FEMA Verified Loss (RPFVL), smaller homes, and were more likely to live in mobile homes” and are more likely to be denied rental assistance, personal property assistance, and receive less personal property assistance even if they do receive an award as compared to higher income households).

13. See generally Individual Assistance Program Equity, 89 Fed. Reg. 3990 (Jan. 22, 2024) (codified at 44 C.F.R. 206). For an overview of other environmental justice and equity-related reforms at FEMA, see *Environmental Justice at the Federal Emergency Management Agency*, HARV. ENV’T & ENERGY L. PROGRAM, <https://eelp.law.harvard.edu/ej-tracker-fema/> [<https://perma.cc/LS6Y-32JW>] (last visited Mar. 11, 2024).

14. See generally U.N. OFF. FOR DISASTER RISK REDUCTION, *Sendai Framework for Disaster Risk Reduction 2015–2030* https://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf [<https://perma.cc/GYT4-PEUS>]; African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Oct. 23, 2009.

15. U.N. OFF. COORD. HUMAN. AFF. [hereinafter OCHA], *Guiding Principles on Internal Displacement*, Introduction (2d ed. 2004), <https://api.internal-displacement.org/sites/default/files/publications/documents/199808-training-OCHA-guiding-principles-Eng2.pdf> [<https://perma.cc/J89T-XHH6>] [hereinafter Guiding Principles]; see generally Walter Kälin, *Conceptualising Climate-Induced Displacement*, in CLIMATE CHANGE AND DISPLACEMENT: MULTIDISCIPLINARY PERSPECTIVES 81, 92 (Jane McAdam ed., 2010), https://www.legalanthology.ch/t/kaelin_conceptualising-climate-induced-displacement_2010.pdf [<https://perma.cc/YRA2-4HA3>] (considering the U.N. Guiding Principles on Internal Displacement in the context of climate change and disasters).

or conflict, and the corresponding obligations of national and subnational governments.

While the Guiding Principles are not legally binding, they represent a robust international consensus on the proper treatment and protection of IDPs. Here, we focus on the Principles' guarantee that IDPs have access to "durable solutions": voluntary return "in safety and with dignity" to one's home or place of residence, voluntary local integration, or voluntary resettlement elsewhere in the country.¹⁶ While these solutions cannot be achieved using a "one-size-fits-all" approach, the Guiding Principles and implementing guidance provide a general framework through which to assess response efforts.¹⁷ 192 national governments, including the United States, recognized the Guiding Principles and "resolve[d] to take effective measures to increase the protection" of IDPs.¹⁸ However, while the United States has occasionally applied the Guiding Principles in international policy, it has never formally applied them to domestic matters.¹⁹

Under the Guiding Principles, national governments have the primary responsibility to respect, fulfill, and protect the rights of IDPs, and to "create an environment that is conducive to the sustainable integration, voluntary return, or resettlement of IDPs . . . in safety, with dignity and without discrimination."²⁰ These solutions must be "sustainable" and include access to employment and livelihood opportunities, access to "mechanisms" to restore housing, land and property, or provide compensation, long-term safety, and an adequate standard of living.²¹

By comparison, the U.S. federal disaster framework is narrower in scope and prioritizes major, sudden-onset events, and provides post-disaster, short-term assistance for specific unmet needs. Most federal disaster response activities are governed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act").²² Those activities can only be triggered after a "major disaster" which is statutorily restricted to sudden-onset events, except

16. Guiding Principles, *supra* note 15, Principle 28 ¶ 1.

17. Carolina Blay & Sophie Crozet, *The United Nations Global Cluster for Early Recovery (GCER): Durable Solutions in Practice*, GLOB. CLUSTER EARLY DISCOVERY, at II (2017) (providing a "practical methodology for a bottom-up approach to durable solutions planning, based on durable solutions targets identified by displacement affected communities . . . [in] post-disaster settings").

18. G.A. Res. 60/1, ¶ 132 (Sept. 16, 2005).

19. See Kelly Carson, Note, *The Water Is Coming: How Policies for Internally Displaced Persons Can Shape the U.S. Response to Sea Level Rise and the Redistribution of the American Population*, 72 HASTINGS L.J. 1279, 1298 (2021).

20. Blay & Crozet, *supra* note 17, at III.

21. *Id.* at 1 (other criteria include the ability to participate in public affairs, on an equal basis with the resident population; effective remedies for displacement-related violations, including access to justice; and voluntary reunification with family members separated during displacement).

22. 42 U.S.C. §§ 5121–5202 (1974). The Stafford Act tasks the Federal Emergency Management Agency ("FEMA") with administering federal disaster relief authorized under the Act, including coordination with other federal agencies, non-federal agencies in the region(s) impacted by the disaster, and other private relief organizations. See, e.g., 42 U.S.C. §§ 5134, 5143, 5152.

for drought.²³ This framework therefore excludes slow-onset events, such as sea-level rise, extreme heat, or erosion, that can displace households but nevertheless fail to trigger federal disaster assistance. Federal disaster agencies have historically resisted interpreting the Stafford Act to cover slow-onset events because those events do not have a clearly defined “incident period,” or time interval in which the disaster occurred.²⁴

Crucially, under the Stafford Act, state, local, tribal, and territorial governments bear the primary responsibility for responding to disasters, but often lack the administrative and financial capacity to identify and assist households displaced or otherwise impacted by environmental hazards.²⁵ While recent legislation has created more funding streams for non-federal governments to invest in pre-disaster preparedness, those funds are often only available to governments via competitive grant processes or subject to extensive administrative delays.²⁶

In the United States, many disaster survivors, especially those forcibly displaced, are unable to access sufficient resources to either repair their home to a livable standard, or access comparable housing alternatives post-disaster.²⁷ Numerous scholars and practitioners have explored this protection gap as applied

23. 42 U.S.C. § 5122(2) (defining “major disaster” as “any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion”). The Stafford Act also authorizes the President to declare an “emergency,” which is defined more broadly as “any occasion or instance” in which “Federal assistance is needed . . . to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe[.]” 42 U.S.C. § 5122(1). However, federal assistance in emergencies is generally capped at USD \$5 million, and it is rare for individuals and households to receive federal assistance in these types of events. *How a Disaster Gets Declared*, FEMA, <https://www.fema.gov/disaster/how-declared> [<https://perma.cc/P5KZ-GLN4>] (last visited Apr. 25, 2023).

24. Diane P. Horn, Erica A. Lee & Elizabeth M. Webster, *Climate Change, Slow-Onset Disasters, and the Federal Emergency Management Agency*, CONG. RSCH. SERV. at 2 (Dec. 1, 2022).

25. Elizabeth M. Webster & Bruce R. Lindsay, *Congressional Primer on Responding to and Recovering from Major Disasters and Emergencies*, CONG. RSCH. SERV., at 2 (June 12, 2023); see also, e.g., Matthew Sanders & Kristiane Huber, *5 Disaster Resilience Challenges Facing State and Federal Officials*, PEW (Jan. 31, 2023), <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/01/31/5-disaster-resilience-challenges-facing-state-and-federal-officials> [<https://perma.cc/8A93-YSTC>] (summarizing findings following a two-day workshop with state and federal resilience experts where “[s]tate officials specifically expressed concern about limited staff, resources, and expertise, especially in small, rural, and historically marginalized communities”).

26. In 2018, Congress passed the Disaster Recovery Reform Act (“DRRA”), which, among other things, created the Building Resilient Infrastructure and Communities (“BRIC”) program, in which six percent of FEMA’s total disaster assistance awarded the previous year is set aside for pre-disaster mitigation efforts. BRIC funds are awarded competitively on an annual basis. Pub. L. No. 115-254, 132 Stat. 3186 (2018). Congress also provides supplemental appropriations for the Department of Housing and Urban Development’s (“HUD”) Community Development Block Grant for Disaster Recovery (“CDBG-DR”) post-disaster. However, because the CDBG-DR program lacks permanent statutory authority, HUD must issue unique guidance for each appropriation, resulting in multi-year delays before those funds can reach disaster-impacted communities. U.S. Gov’t Accountability Off., *Disaster Recovery: Better Information is Needed on the Progress of Block Grant Funds*, at 8 (Dec. 2022).

27. See, e.g., Ayuda Legal Puerto Rico et al., *But Next Time: Storm Survivors Demand Overhaul of Disaster Recovery System*, at 13–16 (Oct. 2022), https://static1.squarespace.com/static/612d3c6768d7525f34b0cc85/t/635c58a719df2627cabf2cf8/1666996423200/But+Next+Time_Report.pdf [<https://perma.cc/6G6J-PH4J>] (summarizing lessons learned and policy recommendations from a coalition of leaders seeking disaster reforms, led by Texas Appleseed).

to specific populations or policy solutions.²⁸ Others have similarly looked to the Guiding Principles as a rights-based framework to propose new legislative fixes or agency-wide reforms to federal disaster response programs.²⁹ Here, we question whether an existing federal statute—the Uniform Relocation Act—could be leveraged to deliver essential benefits to people internally displaced by climate change-related events in the United States, consistent with their rights enumerated under the Guiding Principles.

Specifically, we look to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (“URA”),³⁰ which dictates the federal government’s obligations to people or businesses displaced by federally-funded projects. We show that the URA provides uniquely strong and personalized guarantees of both financial and technical assistance to qualifying displaced persons, and assess whether the URA does, or could be used to, affirm and fulfill some of the federal government’s obligations to people internally displaced by disasters in the United States as articulated under the Guiding Principles. We seek to provide a comprehensive, up-to-date reference guide on the URA’s applicability for those who assist disaster survivors and assess to what extent the URA could be applied to address persistent protection gaps for people internally displaced by disasters in the United States.

We first explain the URA’s origin and scope, and the effect of subsequent case law and amendments (Section I). We then summarize which actions trigger URA protections under the current statutory and regulatory framework, who is protected, and what benefits the URA guarantees (Sections II and III). We also assess whether, and to what extent, the URA enables rights-holders (i.e., IDPs or those threatened with displacement) to hold duty bearers (i.e., government entities) accountable for their obligations under the URA (Section IV). Finally, we assess whether the URA applies to people displaced by, or participating in, climate adaptation or disaster response programs, including buyouts (Section V).

I. ORIGINS AND EARLY INTERPRETATIONS OF THE URA

The URA began as a broad legislative solution to redress the needs of people displaced by large urban renewal projects. Congress passed the URA in 1970 to establish a “uniform policy for the fair and equitable treatment” of

28. See generally Randall S. Abate, *Corporate Responsibility and Climate Justice: A Proposal for A Polluter-Financed Relocation Fund for Federally Recognized Tribes Imperiled by Climate Change*, 25 *FORDHAM ENV'T L. REV.* 10 (2013); Susan M. Sterett & Laura K. Maticzun, *Legal Claims and Compensation in Climate-Related Disasters*, 137 *POL. SCI. Q.* 293 (2022).

29. See, e.g., Carson, *supra* note 19, at 1308–09 (proposing that Congress adopt the then-proposed Climate Displaced Persons Act and create a new independent agency or authority to coordinate disaster response efforts from FEMA, HUD, and SBA).

30. 42 U.S.C. § 4601. We recognize that many of the rights enumerated under the Guiding Principles implicate other federal laws, including nondiscrimination protections under Title VI of the Civil Rights Act and the Americans with Disabilities Act. For purposes of this Article, we focus on rights and duties relevant to the scope of the URA.

people displaced as a “direct result” of federal programs or projects, including federally-funded projects.³¹ Prior to the URA’s passage, people displaced by federal projects would receive different benefits depending on the displacing agency.³² The primary projects of concern included highway construction through urban centers, so-called “urban blight removal,” and repossession of federally financed homes and subsidized housing.³³ Highway construction and “blight removal” projects in particular decimated Black neighborhoods, either by condemning areas of the city in which these communities lived,³⁴ or by leveling Black communities to undertake massive highway projects under the guise of “slum removal.”³⁵ House hearings preceding the URA’s passage addressed the racialized impacts of these projects, and the disproportionate displacement and loss of community that Black Americans experienced.³⁶

While the URA itself does not explicitly address these racially disparate impacts, Congress did call for uniformity across agencies to ensure displaced persons received the same benefits, regardless of the displacing agency.³⁷ Specifically, Congress sought to “ensure that [displaced] persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole” and to “minimize the hardship of displacement on such persons.”³⁸

The URA was also designed to “avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners[.]”³⁹ This litigation risk centered on the Takings Clause of the Fifth Amendment under the U.S. Constitution. The Takings Clause sets out the government’s obligations to those whose property is “taken” by the government through direct or indirect acquisition. A government can effect a taking using its eminent domain power, or by a regulation that is so onerous that it constitutes a “taking” of property.⁴⁰ Federal agencies acquiring private property must therefore comply with

31. 42 U.S.C. § 4621(b).

32. *Alexander v. U.S. Dep’t Hous. & Urb. Dev.*, 441 U.S. 39, 49 (1979).

33. Margaret Barbier & Shireen A. Fisher, *The Uniform Relocation Act: A Viable Solution to the Plight of the Displaced*, 25 CATH. U. L. REV. 552, 552 (1976).

34. Edward Imperatore, Note, *Discriminatory Condemnations and The Fair Housing Act*, 96 GEO. L.J. 1027, 1033–34 (2008).

35. Deborah N. Archer, “White Men’s Roads Through Black Men’s Homes”: *Advancing Racial Equity Through Highway Reconstruction*, 73 VAND. L. REV. 1259, 1264–65 (2020).

36. See H.R. REP. NO. 91–30, at 375 (1970) (“In many cases urban renewal projects can be more appropriately termed Negro removal projects. In Pulaski, Tennessee 51 of the 52 existing structures in the urban renewal project area were occupied by Negroes. Three Easton, Pennsylvania urban renewal projects displaced 150 of the 329 dwelling units occupied by Negroes in the city. A highway in Osage, W. Va. is displacing virtually all of the town’s 150 black residents.”)

37. Barbier & Fisher, *supra* note 33, at 553–54.

38. 42 U.S.C. § 4621(b).

39. 42 U.S.C. § 4651; see also 42 U.S.C. § 4655(a)(1).

40. U.S. CONST. amend. V (“No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”); NICHOLS ON EMINENT DOMAIN, Vol. 2A § 6.01, 6 (2024) (“The just compensation provision of the Takings Clause is not limited in its application to acquisitions under the power of eminent domain. Instead, if a regulation goes ‘too far,’ then it may constitute a form of a regulatory taking necessitating compensation.”).

the Takings Clause and offer “just compensation” to those whose property is implicated.⁴¹

The URA names the Department of Transportation (“DOT”) as the “lead agency” responsible for promulgating regulations implementing the statute.⁴² The DOT also issues guidance on the URA and its provisions, including interpretations and clarification of URA applicability in disasters, often from the Federal Highway Administration (“FHWA”).⁴³ The URA further requires all federal agencies to create and implement procedures to ensure compliance with the URA’s mandates, as guided by regulations and guidance issued by DOT.⁴⁴ In May 2024, FHWA updated its rules implementing the URA to adjust benefits conferred, update definitions, and streamline compliance processes.⁴⁵

Soon after Congress passed the URA, the Supreme Court held that the law only applies to the *affirmative* acquisition of property by a federal agency or using federal funding.⁴⁶ The decision halted efforts by advocates to ensure URA benefits for people inadvertently displaced by federal agencies, such as a private property owner who defaults on a federally insured loan.⁴⁷ Congress later amended the URA in 1987 to expand coverage for rehabilitation and demolition activities, discussed below.⁴⁸

Despite this narrower application, communities have successfully used the URA to obtain more equitable outcomes for federally-funded relocation. For example, shortly after the passage of the URA, the North Carolina Department of Transportation (“NCDOT”) sought to level the majority Black, low-income Crest Street neighborhood and move residents to public housing as part of a federally funded highway project.⁴⁹ The community sued to stop the demolition, citing NCDOT’s failure to comply with federal environmental law and provide “last resort funding” guaranteed under the URA (discussed in greater detail below).⁵⁰ After years of negotiations, NCDOT eventually agreed to use the URA’s provisions to fund the rehabilitation of existing housing and build new homes for displaced residents in a new neighborhood, serving as an early model for affirmative community relocation under the URA.⁵¹

41. Barbier & Fisher, *supra* note 33, at 552.

42. 42 U.S.C. § 4601(12), 4604(b)(1), 4633(a)(1); 49 C.F.R. § 24.1–24.603.

43. *Policy and Guidance*, U.S. DEPT. OF TRANSP., FED. HIGHWAY ADMIN., https://www.fhwa.dot.gov/real_estate/policy_guidance/ [<https://perma.cc/P4RJ-RUNW>] (last visited Oct. 30, 2023).

44. 42 U.S.C. § 4633(a)(1).

45. *See generally* Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, 89 Fed. Reg. 36908 (May 3, 2024) (codified at 49 C.F.R. 24).

46. *See* Alexander, 441 U.S. at 47–49.

47. *Id.*

48. *See* 100 Pub. L. 17, 101 Stat. 132 § 402.

49. William M. Rohe & Scott Mouw, *The Politics of Relocation: The Moving of the Crest Street Community*, 57 J. AM. PLAN. ASS’N 57, 59 (1991).

50. *Id.* at 59–61; *see infra* Section III.2 (detailing the benefits provided under the Last Resort Housing provision).

51. *Id.* at 62–65.

II. QUALIFYING FOR URA PROTECTIONS: THE “DISPLACED PERSON” STANDARD

To be eligible for URA benefits, someone must first qualify as a “displaced person” under the statute. As we show, this definition is exceedingly narrow, and excludes many people who, because of their identity and/or reason for being displaced, are entitled to specific protections, and guarantees under the Guiding Principles. While we do not assume that the URA alone can or should be used to satisfy all these guarantees, it is important to understand precisely who does and does not qualify for those benefits to inform future advocacy and services for disaster survivors.

Under the Guiding Principles, the national government has the primary duty to provide “protection and humanitarian assistance” to IDPs.⁵² Furthermore, IDPs have the “right to request to receive” that protection and assistance.⁵³ That assistance must be provided without discrimination on the basis of, among other things, legal or social status, national origin, disability, property, “or any other similar criteria.”⁵⁴ By comparison, the URA explicitly bars certain groups from qualifying for URA assistance, and as we discuss, gives the federal government significant discretion in deciding which people and activities merit URA benefits. Courts have further narrowed the statute’s scope to effectively exclude people displaced by disaster-related impacts that do not fit squarely within a particular fact pattern. Displaced people also do not have a legal entitlement to URA assistance, and therefore have limited legal recourse to challenge denials of that assistance. However, there are mechanisms by which displacing agencies can affirmatively offer URA assistance for specific projects.

The URA defines a “displaced person” as any “individual, partnership, corporation, or association” displaced as a “direct result” of a property acquisition or other displacing activity with “federal financial assistance.”⁵⁵ In 1987 Congress amended the URA, expanding this definition to also cover people displaced “as a direct result of [federally-funded] rehabilitation, demolition or such other displacing activity,” if the displacing agency determines that the

52. Guiding Principles, *supra* note 15, Principles 3, ¶ 1; 25, ¶ 1.

53. *Id.* Principle 3, ¶ 2.

54. *Id.* Principle 4, ¶ 1.

55. See 42 U.S.C. § 4601(5)–(6). The definition explicitly excludes someone whom the agency determines is unlawfully occupying the dwelling or occupied the dwelling for the sole purpose of obtaining URA assistance. The definition also excludes renters who occupied the property for a “short term” or for a term “subject to termination when the property is needed for the [displacing] program or project.” *Id.* at 4601(6)(B); see also 42 U.S.C. § 4601(11) (“The term “displacing agency” means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.”)

resulting displacement is permanent.⁵⁶ The amendment also affirmed that the URA applies to private parties using federal funds.⁵⁷

Even following the 1987 amendments, the URA's definition of "displaced person" differs in notable ways from the definition of "internally displaced persons" under the Guiding Principles, which refers to "persons or groups of persons forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of . . . natural or human-made disasters."⁵⁸ While the URA's definition applies more broadly to include displaced corporate entities, it also explicitly excludes key groups covered under the Guiding Principles, including undocumented immigrants and people experiencing homelessness.⁵⁹ The statute does include an exception for undocumented applicants experiencing "exceptional and extremely unusual hardship," but that determination is wholly within the discretion of the displacing agency.⁶⁰ The URA also does not apply to anyone living on the affected property who is not the owner or a legally present tenant,⁶¹ which could exclude long-time residents unable to prove legal homeownership or residency, including unnamed tenants or owners of heirs property.

Under the URA, there are two primary ways that a homeowner or renter can qualify as a "displaced person": if the home is purchased by a federal agency or using federal financial assistance (the acquisition clause), or if the homeowner or renter receives notice that the home *will be* purchased, demolished, or rehabilitated (or other similar activity) using federal funds (the written order clause).⁶² Notably, assistance under the written order clause only qualifies a displaced person for relocation advisory services and moving expenses, not the full range of URA benefits.⁶³ Applicants can also qualify if they are displaced

56. 42 U.S.C. § 4601(6)(A)(i)(II). See also U.S. Gen. Accounting Off., Off. of Gen. Counsel, GAO-08-978SP, *Principles of Federal Appropriations Law: Third Edition, Volume III*, Ch. 13, at 72–75 (Sep. 1, 2008), <https://www.gao.gov/assets/gao-08-978sp.pdf> [<https://perma.cc/MA4S-AFXW>].

57. *Id.* at 75–76; see also *infra* Section II.4.

58. Guiding Principles, *supra* note 15, Introduction, ¶ 2.

59. See 42 U.S.C. § 4605 ("Except as [in the case of exceptional and extremely unusual hardship], a displaced person shall not be eligible to receive relocation payments or any other assistance under this Act if the displaced person is an alien not lawfully present in the United States."); see also 42 U.S.C. § 4601(6)(B) ("The term 'displaced person' does not include—(i) a person who has been determined...to be...in unlawful occupancy of the displacement dwelling.")

60. 42 U.S.C. § 4605(c); Fed. Highway Admin., *Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program*, Publication No. FHWA-HEP-05-031, 4 (October 2014), https://www.fhwa.dot.gov/real_estate/publications/your_rights/rights2014.pdf [<https://perma.cc/2QAS-ZSV2>]; see also 49 C.F.R. § 24.208(h) (defining "exceptional and extremely unusual hardship" as "(1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child; (2) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or (3) Any other impact that the displacing Agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child").

61. 42 U.S.C. § 4601(6)(B)(i) (stating that the URA does not apply to any person who is "either in unlawful occupancy of the displacement dwelling or . . . ha[s] occupied such dwelling for the purpose of obtaining assistance under [the URA]")

62. See *Alexander*, 441 U.S. at 43 (citing *Blount v. Harris*, 593 F.2d 336 (8th Cir. 1979) and *Caramico v. Sec'y of Dep't of Hous. & Urb. Dev.*, 509 F.2d 694 (2d Cir. 1974)).

63. 49 C.F.R. § 24.2(a)(9)(i)(C).

by federally-funded rehabilitation, demolition, or “other activities,” discussed below.

The threshold question for qualifying as a displaced person is therefore whether the displacing activity was conducted using “federal financial assistance.” Courts have narrowly interpreted the meaning of “federal financial assistance” under the URA to require a “present nexus” between a federally assisted program or project and the displacing activity.⁶⁴ Someone can likely show a “present nexus” if the displacing program or project received federal funding prior to the displacement; it is not necessary that federal funds be traced directly to the activity’s impact on a particular parcel of land.⁶⁵ Importantly, the “present nexus” requirement is more demanding than the nexus required under federal civil rights law, in which the acceptance of any “federal financial assistance” triggers an obligation to comply with the law, regardless of the specific assistance recipient or purpose of that assistance.⁶⁶

Below, we walk through the various types of activities that might trigger URA assistance, assuming the “present nexus” requirement is satisfied, including updates from federal caselaw and agency regulations.

1. *Rehabilitation, Demolition, or “Other Activities” Resulting in Displacement*

In 1987, Congress amended the URA, broadening the definition of “displaced person” to include people permanently displaced by federally-funded “rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe.”⁶⁷ As stated in the accompanying Senate report, “[t]his legislation corrects a number of problems experienced in the administration of the act. It substantially broadens the coverage of the act, raises assistance levels across the board, improves State and local discretion, and incorporates a broad range of management-oriented reforms.”⁶⁸ However, Congress also sought to achieve “a fair and equitable balancing of the need to efficiently carry out programs and projects in the public interest . . . Even as broadened under [the

64. See e.g., *Day v. Dayton*, 604 F. Supp. 191, 197 (S.D. Ohio 1984) (finding that plaintiffs were not “displaced persons” under the URA because the decision to purchase plaintiffs’ property “was not influenced in any aspect by the possible existence or non-existence of federal funding” after plaintiffs sold their property to the neighboring airport to avoid noise resulting from a recent federally-funded airport and highway expansion); *Owens v. Charleston Hous. Auth.*, 336 F. Supp. 2d 934, 947–48 (E.D. Mo. 2004) (finding that plaintiffs failed to show the proposed demolition of their apartment building was federally-funded even though the housing authority “used its operating account, consisting of HUD funds and rental payments” to pay for a related asbestos inspection);

65. *Day v. Dayton*, 604 F. Supp. at 197 (quoting *Lake Park Home Owners’ v. U.S. Dep’t of Hous. & Urb. Dev.*, 443 F. Supp. 6 (S.D. Ohio 1976)).

66. See, e.g., *Title VI Legal Manual (Updated): Section V – Defining Title VI*, U.S. DEPT. OF JUST. CIV. RTS. DIV. (last visited Apr. 7, 2024), <https://www.justice.gov/crt/fcs/T6manual5> (“If a unit of a state or local government is extended federal aid and distributes such aid to another governmental entity, all of the operations of the entity which distributes the funds and all of the operations of the department or agency to which the funds are distributed are covered.”)

67. See GAO-08-978SP, *supra* note 56, Ch. 13, at 72.

68. S. Rept. 98-71, at 2, 7–8 (1983).

URA], as amended, the act will cover only a small proportion of all involuntary displacement occurring in the United States.”⁶⁹

Under the amended definition, where a project using federal funds permanently and directly displaces someone “as a direct result of rehabilitation, demolition, or such other displacing activity,” that person is a “displaced person” and thus entitled to URA assistance.⁷⁰ The new definition expanded the types of actions that require URA assistance but did not change the *Alexander* requirement that the action be conscious and affirmative (discussed below).

Courts also narrowly apply the provision’s requirement that displacement be the “direct result” of the rehabilitation, demolition or “other activity.” For example, in *Shephard v. Houma Terrebonne Housing Authority*, a Louisiana housing authority submitted a five-year plan to HUD to renovate a public housing complex. However, the complex was then severely damaged by Hurricane Ida, and the housing authority relocated the tenants to FEMA trailers. The district court denied plaintiffs’ motion for a preliminary injunction, finding it was still disputed whether plaintiffs were displaced by renovations related to the five-year plan, or by the damage from Hurricane Ida. If the former, plaintiffs would qualify as “displaced persons” under the URA, and therefore be entitled to URA benefits.⁷¹

DOT regulations do not define “other displacing activity” under this provision. However, a recent decision from the Fifth Circuit suggests that federal courts will interpret this provision narrowly, and not infer other activities trigger URA protections unless DOT explicitly promulgates a regulation to that effect. In 2022, the Fifth Circuit reviewed a claim by Houston residents living in federally subsidized housing following Hurricane Harvey.⁷² The apartment complex, Arbor Court, was severely flooded during Harvey, and the owner was unresponsive to tenant complaints that the complex had become uninhabitable. HUD transferred the complex’s subsidy to another property, Cullen Park, and offered Arbor Court tenants the option to move to the new property or receive housing vouchers.⁷³ After selecting the housing vouchers, plaintiffs sued HUD seeking URA assistance. The Fifth Circuit affirmed that only DOT, as the lead agency under the URA, has the authority to prescribe what is, and isn’t, “other displacing activity.” Because DOT had not promulgated a regulation stating that Section 8 subsidy transfers are “displacing activity,” the court held plaintiffs are not “displaced persons” under the URA.⁷⁴

69. *Id.*

70. See 42 U.S.C. § 4601(6)(A)(i)(II); 4601(6)(A)(ii)(II). This provision also explicitly applies to tenants, small businesses, farm operations, or business. The displacing agency is responsible for determining whether the displacement is permanent and thus triggers URA assistance. See, e.g., *Jones v. City of New York*, 2013 U.S. Dist. LEXIS 111981 at *13–*14 (E.D.N.Y. 2013) (upholding a state agency’s determination that plaintiff’s displacement was not permanent after plaintiff was “repeatedly told that he would be able to return to the Building when the rehabilitation was complete”).

71. *Shephard v. Houma Terrebonne Hous. Auth.*, 2023 U.S. Dist. LEXIS 150973 at *1–*2 (E.D. La. Aug. 28, 2023).

72. See generally *Jackson v. U.S. Dep’t of Hous. & Urb. Dev.*, 38 F.4th 463 (5th Cir. 2022).

73. *Id.* at 465–66.

74. *Id.* at 467.

2. *The Acquisition Clause*

Under the acquisition clause, a “displaced person” is someone (an owner-occupant or renter) who must leave their home as a “direct result” of the purchase of that property, in whole or in part, using federal funding.⁷⁵ Importantly, a person must vacate the property as a direct result of the acquisition, and will not qualify as a “displaced person” if they leave because they *expect* to be displaced.⁷⁶

Notably, several federal courts have held that property acquisitions by the federal government must be affirmative; “accidental” or “involuntary” acquisitions, such as mortgage foreclosures, do not trigger URA protections. The Second Circuit first considered this question in 1974, in *Caramico v. Secretary of the Department of Housing & Urban Development*.⁷⁷ In *Caramico*, a landlord defaulted on his Federal Housing Administration-insured (“FHA”) mortgage. FHA regulations required the landlord to deliver a vacant property to recover on his mortgage insurance.⁷⁸ The landlord evicted the tenants from the property, who in turn sought URA protections, arguing that their displacement resulted from a federal acquisition of property, likening the FHA’s regulations to a federal urban renewal program.⁷⁹ The court rejected plaintiffs’ reading of the statute, holding that the URA only contemplates “normal government acquisitions” resulting from “conscious decisions” such as building a highway, housing project, or hospital.⁸⁰ Default acquisitions by the FHA are “clearly involuntary and in response to the default,” and thus not covered by the URA.⁸¹

Five years later, the Eighth Circuit adopted the *Caramico* logic, holding that a nursing home tenant was not a “displaced person” under the URA because her eviction resulted from an involuntary mortgage foreclosure.⁸² In that case, *Blount v. Harris*, the plaintiff was a tenant in a nursing home secured by a HUD-insured mortgage. The homeowner defaulted on their mortgage payments and two years later, HUD issued a written order to all the tenants to vacate the property so the building could be sold.⁸³ The plaintiff tenant sued, alleging that she was entitled to URA assistance. The court disagreed, holding that, like in *Caramico*, the term “program or project” in the URA’s definition of

75. 42 U.S.C. § 4601(6)(A)(i)(I). The acquisition clause also applies if someone has to move personal property from their home as a direct result of the federally-funded purchase. The purchase can be made directly by a federal agency, or another entity using federal funding.

76. See *Lowell v. Sec’y of Dep’t of Hous. & Urb. Dev.*, 446 F. Supp. 859 (N.D. Cal. 1977) (holding that a tenant who moved in the expectation of an imminent HUD development but prior to any acquisition or written order by the agency was not entitled to URA protections); see also *Highway Pavers, Inc. v. Sec’y of U.S. Dep’t of Interior*, 650 F. Supp. 559 (S.D. Fla. 1986) (finding that a property owner was not a “displaced person” because he left prior to the initiation of eminent domain proceedings).

77. *Caramico v. Sec’y of U.S. Dep’t of Hous. & Urb. Dev.*, 509 F.2d 694 (2d Cir. 1974).

78. *Id.* at 696.

79. *Id.*

80. *Id.* at 698–99.

81. *Id.*

82. *Blount v. Harris*, 593 F.2d 336 (8th Cir. 1979).

83. *Id.* at 338.

“displaced person” categorically excludes government acquisition of property through mortgage foreclosures.⁸⁴

A. “Voluntary” Acquisitions

The URA does not apply to “voluntary” acquisitions.⁸⁵ However, “voluntary” is a term of art defined under FHWA’s regulations and refers to a much narrower set of circumstances than implied by “voluntary” in the colloquial sense. As stated by HUD, “a common misconception is that a ‘willing seller’ or ‘amicable agreement’ means a transaction is ‘voluntary.’ This is not necessarily true under the URA and the applicable requirements of 49 CFR 24.101(b)(1)–(3) must be satisfied [by agencies with eminent domain authority] for a transaction to be considered a ‘voluntary acquisition’ for purposes of the URA.”⁸⁶

If an acquiring agency or entity has eminent domain authority, the acquisition must satisfy specific regulatory criteria for the acquisition to be deemed “voluntary.” This is true regardless of whether the agency *relies* on that authority. Specifically, the displacing agency must (i) ensure that all owners in a geographic area are “treated similarly”; (ii) not acquire the property as part of a project that intends to acquire all or nearly all of the property in an area within a fixed time period; (iii) inform the property owner in writing that the property will not be acquired through condemnation if amicable negotiations fail; (iv) inform the property owner in writing of the property’s fair market value.⁸⁷ Critically, in all cases, displaced *tenants* must be provided with relocation assistance.⁸⁸

3. The Written Order Clause

Under the written order clause, a “displaced person” is anyone that leaves their home or moves personal property from the home directly as a result of a *notice* of the planned purchase of their property using federal funding, either in part or in whole.⁸⁹ The displacing entity need not complete the acquisition for the displaced person to obtain URA assistance, so long as the written order was issued for a proposed acquisition.⁹⁰

84. *Id.* at 338–39.

85. 49 C.F.R. §§ 24.2(a)(9)(ii)(E), (H) (defining “Persons not displaced” to include owner-occupants whose property is acquired voluntarily, as defined by 49 C.F.R. §§ 24.101(b)(1)).

86. U.S. Dep’t of Hous. & Urb. Dev., *Tenant Assistance, Relocation and Real Property Acquisition Handbook*, Chapter 5: Real Property Acquisition, ¶ 5-2A, https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780 [<https://perma.cc/5WCT-LHLM>] (last visited May 16, 2024).

87. 49 C.F.R. § 24.101(b)(1)(i)–(iv); *see also Real Estate Acquisition and Relocation Overview in HUD Programs*, HUDEXCHANGE, <https://www.hudexchange.info/programs/relocation/overview/#voluntary-acquisition-vs-involuntary-acquisition-of-property> [<https://perma.cc/B9Z2-5F7P>] (last visited May 16, 2024).

88. *Id.*

89. 42 U.S.C. § 4601(6)(A)(i)(I) (“[A]ny person who moves from real property or moves his personal property from real property . . . as a direct result of a written order of intent to acquire . . . such real property in whole or in part for a program or project undertaken by a federal agency or with Federal financial assistance.”).

90. *See Alexander*, 441 U.S. at 59.

In 1979, the Supreme Court held that to qualify for URA assistance under the written order clause, one must satisfy a two part test: (1) the order to vacate results directly from an actual or contemplated property acquisition, and (2) the acquisition is “for” a federal program or project.⁹¹ In that case, *Alexander v. Department of Housing & Urban Development*, HUD acquired several housing projects after the project sponsors defaulted on their federally-insured loans. HUD then closed and demolished the housing projects. The evicted tenants sought relocation benefits under the URA, which HUD denied. The displaced tenants then sued HUD, alleging they were “displaced persons” under the URA’s written order clause and thus entitled to URA benefits.⁹² The Court disagreed, holding that someone seeking URA assistance must be able to show that, *at the time of acquisition*, the agency intended to use the property for the specific federal program or project resulting in the displacement.⁹³ In other words, the displacing program must drive the agency’s decision to acquire property, not the other way around.⁹⁴ As the Court itself recognized, this two-part test “substantially limit[s] applicability of the written order clause.”⁹⁵

4. *Private Entities can Trigger URA Protections*

Following the passage of the URA, several federal courts held that the URA did not apply to private acquisitions, even where federal funding was used. In 1978, the Government Accountability Office (“GAO”) issued a report highlighting this issue and recommended that Congress “consider[s] whether the [URA] should cover all displacements caused by Federal or federally assisted acquisition and nonacquisition projects,” noting that Congress had already introduced amendments to that end.⁹⁶ In 1987, Congress amended the URA to explicitly cover people displaced by federally-funded projects implemented by private parties, affirmatively rejecting a series of decisions by federal circuit courts that had limited the URA to only cover actions by *public* entities using federal funds. In this Section, we review those early court cases and explain which holdings remain good law, and which were overruled by the 1987 URA amendment.

In one of the first cases to consider the scope of the URA following its passage, *Parlane Sportswear Co. v. Weinberger*, a private university owned a building and sought to renovate it using a grant from the National Institutes of Health.

91. *Id.* at 62–63.

92. *Id.* at 43.

93. *Id.* at 63.

94. *Id.*

95. *Id.* The Court’s decision in *Alexander* cemented the interpretation of some lower courts that the written order clause is intertwined with acquisition and does not operate as a freestanding guarantee of relocation protections in other cases of displacement. *See e.g.*, *Harris v. Lynn*, 555 F.2d 1357 (8th Cir. 1977) (rejecting claim that displacement arising from the demolition of HUD housing project triggered the URA because URA eligibility requires acquisition of property).

96. U.S. Gen. Accounting Off. [hereinafter GAO], GGD-78-6, *Changes Needed in the Relocation Act To Achieve More Uniform Treatment of Persons Displaced by Federal Programs*, i–iv (Mar. 8, 1978), <https://www.gao.gov/products/ggd-78-6>.

Before beginning renovations, the university evicted a tenant company whose lease in the building had already expired. The company sought URA assistance and was denied. The First Circuit affirmed the denial, holding that the URA did not apply to people displaced by a private entity.⁹⁷ The court relied on language from the House Committee report, which stated that the URA is intended to address displacement resulting from “public works projects” and “public improvement programs.”⁹⁸ The GAO has stated that the *Parlane* holding remains good law despite the 1987 amendments to the URA to cover private entities, because the plaintiff company’s lease had already expired, and therefore there was no “acquisition” at issue.⁹⁹

In another early case, *Moorer v. Department of Housing & Urban Development*, the Eighth Circuit held that URA benefits only attach when real property is acquired by a governmental entity with the power of eminent domain.¹⁰⁰ In that case, a private developer entered into an agreement with the city of Kansas City, Missouri to rehabilitate six housing projects, for which the developers would receive interest and rental subsidy payments and FHA-insured mortgage financing, but no direct funding from HUD.¹⁰¹ The district court held that the URA applied to the project because the project was “undertaken by a federal agency” or alternatively, “a project undertaken with Federal financial assistance.”¹⁰² The Eighth Circuit rejected the lower court’s reading, holding that “[t]he URA was intended to benefit those displaced by public agencies with coercive acquisition power.”¹⁰³ Because the property at issue was acquired by a private developer without the use of eminent domain, the court held that the tenants displaced by the project were not “displaced persons” under the URA.¹⁰⁴

Other courts followed *Moorer* to require that someone be displaced by a public entity using federal funds to qualify for URA assistance. Notably, the Seventh Circuit considered whether the URA applied to a tenant who was evicted to make way for a new housing project that would be funded through HUD’s Section 8 program once completed.¹⁰⁵ In *Conway v. Harris*, the court relied heavily on *Moorer* to determine that the action was predominately a private acquisition, notwithstanding the future funding by HUD through Section 8, and was therefore exempt from URA requirements.¹⁰⁶

97. *Parlane Sportswear Co. v. Weinberger*, 513 F.2d 835, 836–37 (1st Cir. 1975).

98. *Id.* at 836 (citing H.R. Rep. No. 1656) (emphasis added).

99. See GAO-08-978SP, *supra* note 56, Ch. 13, at 76.

100. 561 F.2d 175, 183 (8th Cir. 1977).

101. *Id.* at 177.

102. *Id.* at 179.

103. *Id.* at 182. The court also noted that the statutory definition of “Federal financial assistance” under § 4601(4) expressly excludes mortgage insurance. *Id.* at 179.

104. *Id.* at 183.

105. *Conway v. Harris*, 586 F.2d 1137, 1137–38 (7th Cir. 1978).

106. *Id.* at 1140 (“[T]he plain statutory language indicates that the URA benefits are available to displaced persons only on projects undertaken by federal agencies or by state agencies receiving federal financial assistance. We will leave any extension of the statute to Congress.”) (internal citations omitted).

One year later, in *Young v. Harris*,¹⁰⁷ the Eighth Circuit held that the grant of eminent domain powers to a private entity was not sufficient, by itself, to trigger the URA.¹⁰⁸ The court stated that funds given to a private entity only qualify as “federal financial assistance” if those funds are designated for the acquisition of the property resulting in displacement, but not if the funds go to the private entity generally.¹⁰⁹ In that case, the City of St. Louis, Missouri, declared a majority Black, low-income community to be blighted, and designated it a “redevelopment area” under state law, enabling private entities to exercise eminent domain powers (among other authorities and privileges) in the area.¹¹⁰ After the city approved private developers’ redevelopment plans, residents sued, alleging, among other things, that they were entitled to URA assistance. The court disagreed, placing the burden on plaintiffs to establish that the developer’s relationship with the City is “sufficient to deprive the developer’s project of its status as a private project.”¹¹¹ Thus, under *Young*, even if the displacing private entity has delegated powers of eminent domain, that would be insufficient for URA eligibility.

The 1987 URA amendment repudiated these holdings, clarifying that the URA *can* be triggered by federally-funded projects implemented by private parties.¹¹² Specifically, the amendment expanded the definition of “displacing agency” to include any “*person* carrying out a program or project with Federal financial assistance.”¹¹³ Under the URA, any “person” includes “any individual, partnership, corporation, or association.”¹¹⁴ Thus, the amendment explicitly expanded the URA to cover federally assisted projects implemented by private entities.

5. *The URA on Tribal Lands*

The Guiding Principles place a “particular obligation” on governments to “protect against the displacement of indigenous peoples” among other groups.¹¹⁵ However, federal courts have rejected attempts to broaden the scope of the URA to provide protections to displaced tribal members consistent with the federal government’s trust duty to federally recognized tribes.

107. 599 F.2d 870 (8th Cir. 1979).

108. *Id.* at 878.

109. *Id.* at 877–78.

110. *Id.* at 874. Under the Missouri Urban Redevelopment Corporation Law, corporations that comply with the statute’s provisions “with a public purpose of redeveloping blighted areas” receive special privileges and authorities, including the power of eminent domain and property tax abatements on redeveloped property. *Id.* at 873–74; see also Mo. Rev. Stat. §§ 353.010–353.190.

111. *Id.* at 877. See also *Isham v. Pierce*, 694 F.2d 1196, 1205 (9th Cir. 1982) (“The threshold issue [for URA applicability] is whether the real property was acquired by a federal agency or a state agency receiving federal financial assistance.”).

112. See GAO-08-978SP, *supra* note 56, Ch. 13, at 76.

113. 42 U.S.C. § 4601(11) (emphasis added).

114. *Id.* at § 4601(5).

115. Guiding Principles, *supra* note 15, Principle 9.

In *Austin v. Andrus*,¹¹⁶ members of the Navajo Tribe sought, and were denied, URA assistance after claiming they had been or were about to be displaced by private mining activities on the Tribe's reservation.¹¹⁷ The Navajo Tribe had leased mining rights within the reservation to a private mining company; the Department of the Interior then approved the company's mining plan, and mining activities began six years later. Plaintiffs argued that the leasing of mineral rights was an "acquisition of real property," and the URA applied because of the federal government's approval of the company's mining plan and project financing through Bureau of Reclamation subsidies.¹¹⁸ Plaintiffs argued in the alternative that the displaced tribal members lived on lands held in trust by the federal government and therefore were owed a fiduciary duty of protection and care, and thus entitled to URA protections.¹¹⁹

The Ninth Circuit rejected both arguments. Relying on *Moorer*, the Ninth Circuit determined that the mining rights were acquired via negotiations between the private mining company and the Navajo tribal government, notwithstanding the federal government's final approval of the deal, and therefore did not trigger the URA's acquisition clause.¹²⁰ The court embraced the *Moorer* interpretation, ruling that the *degree* of federal involvement is irrelevant to whether the URA applies; the proper test is "whether the person involved was displaced by governmental action either acquiring the property or issuing an order to vacate the property."¹²¹ The court further dismissed plaintiffs' claim that the government had violated its trust obligation to the tribe, determining that "[t]he existence of this fiduciary obligation does not relieve [the tribal members] of the necessity of qualifying as 'displaced persons.'"¹²²

Though the Ninth Circuit relied in part on *Moorer*, which was repudiated under the 1987 URA amendment, the GAO said in 2008 that the case "appear[s] to remain valid" because the tribe was forced to relocate as a result of the tribe leasing mineral rights to the private company.¹²³ Notably, the FHWA's current acquisition guidance clarifies that "acquisitions" under the URA include "any interest in land" including "less-than-fee interests . . . air or access rights . . . and other contractual rights."¹²⁴ In light of this guidance and the 1987 amendments, *Austin* could be decided differently if a court found that the federal government's approval of and subsidies for the mining activity amount to "Federal financial assistance" under the URA.

116. 638 F.2d 113 (9th Cir. 1981).

117. *Id.* at 114–15.

118. *Id.* at 115.

119. *Id.*

120. *Id.* at 116.

121. *Id.* (quoting *Moorer v. Dep't of Hous. & Urb. Dev.*, 561 F.2d 175, 183 (8th Cir. 1977)).

122. *Id.* at 117.

123. See GAO-08-978SP, *supra* note 56, Ch. 13, at 76.

124. Fed. Highway Admin., *Real Estate Acquisition Guide For Local Public Agencies*, Publication No. FHWA-HEP-19-011, 146 (2018), <https://route28bypass.com/wp-content/uploads/2021/05/FHWA-Uniform-Act-Real-Estate-Acquisition-Guide.pdf> [<https://perma.cc/6REW-69FX>].

6. *Reviewing the “Displaced Person” Standard: Who’s In and Who’s Out*

Simply put, qualifying for URA protections is hard. To meet the “displaced person” standard, a person or businesses must be *directly* displaced by an entity receiving federal funding that acts deliberately and consciously. While different kinds of activities might trigger that displacement (acquisition, notice of a future acquisition, rehabilitation, or demolition), the “deliberate” requirement prevents the URA from protecting people displaced by the termination of federal housing assistance, defaults on federally backed mortgages, and other indirect acquisitions. The URA also includes explicit protection gaps: the statute does not protect people who are undocumented (with extremely limited exceptions) or people who can’t prove formal residency or homeownership, including informal residents or tenants, people experiencing homelessness, or owners of heirs’ property.

These protection gaps exclude many who otherwise fall under the definition of IDPs under the Guiding Principles. Case law interpreting the URA’s applicability on tribal lands also ignores the special obligations national governments owe to Indigenous Peoples, including a “particular obligation to protect against [their] displacement.”¹²⁵ The URA also grants significant discretion to the lead and displacing agencies to determine when URA protections apply, including whether someone is “permanently” displaced. Courts have also determined the URA does not include “rights-creating language,” leaving displaced peoples with limited levers to “request and receive” assistance as required under the Guiding Principles.

In subsequent sections, we walk through the benefits offered to people who *do* qualify for URA protections, and consider how the “displaced person” standard might be met in the context of disaster-related displacement, including climate change adaptation programs.

III. URA BENEFITS AND PROTECTIONS

Under the URA, if someone qualifies as a “displaced person,” the statute and FHWA’s implementing regulations set out specific rights and protections for them.¹²⁶ Importantly, the displacing federal agency must identify a substantially similar home where the displaced person can move to *before* they are displaced.¹²⁷ FHWA rules also bar the displacing agency from requiring the displaced person to accept a relocation dwelling in lieu of payments they would otherwise be eligible for.¹²⁸ A qualifying “displaced person” also receives

125. Guiding Principles, *supra* note 15, Principle 9.

126. 42 U.S.C. § 4622(a).

127. 49 C.F.R. § 24.404(b) (“[N]o person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person.”).

128. *Id.* This prohibition does not apply if the displaced person and agency have otherwise entered into a contract regarding the provision of the replacement dwelling. *Id.*

relocation assistance in the form of compensation for displacement-related expenses and advisory services to identify new housing, discussed below.

Many of these guarantees, if properly implemented, would support essential rights and obligations set out under the Guiding Principles, including the right of IDPs to an “adequate standard of living” and the “freedom to choose [their] residence.”¹²⁹ However, the extent to which the URA fulfills such goals is context-specific. In this Section, we explain the benefits owed to qualifying “displaced persons” under the URA and assess whether such benefits can be enforced by the “displaced persons” themselves.

1. *The Comparable Replacement Dwelling Requirement*

If a project triggers the URA, the statute guarantees that the project shall not displace anyone “unless the head of the displacing agency is satisfied that comparable replacement housing is available” to them.¹³⁰ Crucially, FHWA’s implementing regulations explicitly prohibit requiring the displaced person to move into a home that is not “functionally equivalent” to the home they were displaced from.¹³¹ FHWA regulations further clarify that at least one, but ideally three or more, “comparable replacement dwelling[s]” must be made available.¹³² The URA and FHWA rules define “comparable replacement dwellings” as the “functional equivalent” of the displaced person’s original home: while the homes need not be identical, the “principal features” must be present.¹³³ The home must be “decent, safe, and sanitary,”¹³⁴ of “adequate size” for the number of occupants, in an “equally desirable location,” “not subject to unreasonable adverse environmental conditions” and with “reasonable access” to the displaced person’s workplace, among other criteria.¹³⁵ Crucially, the dwelling must also be “within the financial means” of the displaced person.¹³⁶

Notably, the displacing agency can waive the “comparable replacement dwelling” requirement if the displacement is the result of a declared major disaster or emergency under the Stafford Act, a presidentially-declared national emergency, or some other emergency resulting in mandatory evacuations.¹³⁷ However, FHWA regulations create specific protections for someone who is otherwise eligible for URA assistance but is first displaced by a disaster or

129. Guiding Principles, *supra* note 15, Principles 14 ¶ 1; 18 ¶ 1.

130. 42 U.S.C. § 4626(b).

131. 49 C.F.R. § 24.404(c)(2).

132. 49 C.F.R. § 24.204(a).

133. 42 U.S.C. § 4601(10); 49 C.F.R. § 24.2(a)(6)(ii).

134. 49 C.F.R. § 24.2(a)(8) (“[D]ecent, safe, and sanitary (DSS) dwelling means a dwelling which meets the requirements of paragraphs (i) through (vii) of this definition or the most stringent of the local housing code, Federal agency regulations, or the agency’s regulations or written policy.”)

135. 42 U.S.C. § 4601(10); 49 C.F.R. § 24.2(a)(6)(iii–v).

136. 42 U.S.C. § 4601(10); 49 C.F.R. § 24.2(a)(6)(viii) (setting out specific criteria to determine when a dwelling is “within the financial means” of a displaced person under the URA).

137. 42 U.S.C. § 4625(c)(3); 49 C.F.R. § 24.204(b)(1)–(3) (allowing the agency to waive URA applicability in the context of “immediate vacation of the real property such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health and safety of the occupants or the public”).

emergency. In that scenario, the displacing agency must “take whatever steps are necessary” to ensure the person is temporarily relocated to a decent, safe and sanitary dwelling, pay the person’s moving expenses and other associated costs, and “as soon as feasible” make a comparable replacement dwelling available.¹³⁸

2. *Relocation Payments*

The URA also compensates qualifying “displaced persons” for reasonable moving expenses and related personal property loss,¹³⁹ or alternatively, a fixed expense and dislocation allowance.¹⁴⁰ To qualify for relocation payments, the replacement housing provided to or chosen by the displaced person must be a “decent, sanitary, and safe dwelling.” This standard generally requires that the home comply with local housing codes consistent with federal minimum standards, unless waived by the displacing agency for good cause.¹⁴¹ A displaced person can also reject a replacement dwelling offered by the displacing agency (discussed above), and instead find a replacement dwelling themselves, so long as it also a “decent, sanitary and safe dwelling.”¹⁴² The URA also rewards displaced people with additional benefits if they have lived in the affected property for at least ninety days before the “initiation of negotiations” to acquire the property.¹⁴³ Homeowners who meet this occupancy requirement are entitled to additional payments up to USD \$41,200, as adjusted by FHWA regulations in 2024.¹⁴⁴ Renters who meet the occupancy requirement are entitled to rental assistance or payments toward a down payment for up to USD \$9,570, as adjusted by FHWA regulations in 2024.¹⁴⁵ By comparison, a tenant who does *not* meet the ninety-day occupancy requirement may only receive relocation advisory services and relocation-related payments.¹⁴⁶ DOT (via the FHWA) has the authority to adjust relocation payments by regulation to reflect “cost of living, inflation, or other factors.”¹⁴⁷ In its 2024 regulatory update, FHWA removed the five-year waiting period on updating payments, allowing for adjustments as necessary.¹⁴⁸

138. 49 C.F.R. § 24.204(c).

139. 42 U.S.C. §§ 4622(a)–(b). The URA also reimburses qualifying expenses for qualifying businesses, farms, and nonprofit organizations. 42 U.S.C. § 4622(c).

140. 42 U.S.C. § 4622(b); 49 C.F.R. § 24.302.

141. 49 C.F.R. § 24.2; 49 C.F.R. § 24.401(a)(2); 49 C.F.R. § 24.402(a)(2).

142. See FHWA-HEP-05-031, *supra* note 60, at 16. The “initiation of negotiations” is typically the date when the acquiring entity (an agency or private entity using federal funds) makes the first personal contact with the property owner, or their representative, to provide a written offer to purchase the property. *Id.*

143. See *id.*

144. 42 U.S.C. § 4623(a)(1); 49 C.F.R. § 24.401(b) (as amended by 89 Fed. Reg. 36908); Memorandum from Virgil R. Pridemore, Dir., Off. Real Est. Serv., to Div. Adm’rs, Dir. of Fed. Lands, on Implementation of MAP-21 Uniform Act Benefit and Eligibility Changes (Mar. 25, 2014), https://www.fhwa.dot.gov/real_estate/policy_guidance/map212014.cfm [<https://perma.cc/8K6R-FTR9>].

145. 49 C.F.R. § 24.402(a) (as amended by 89 Fed. Reg. 36908); Memorandum from Virgil R. Pridemore to Division Administrators, *supra* note 144.

146. See FHWA-HEP-05-031, *supra* note 60, at 17.

147. 42 U.S.C. § 4633(d).

148. 49 C.F.R. § 24.11(b) (as amended by 89 Fed. Reg. 36908).

Crucially, the URA compensates homeowners based on the replacement value of the home from which they were displaced. The URA also guarantees qualifying “displaced persons” mortgage-interest differential payment and moving expenses, including mortgage and closing costs.¹⁴⁹ This framework is distinct from many federal disaster programs, which compensate home buyout participants based on the property’s pre-disaster fair market value, and often do not include closing and other moving-related costs.¹⁵⁰ Following a disaster, the price of housing can surge as demand far outpaces supply. For example, in Maui following the Lahaina wildfires, displaced residents confronted a “skyrocketing rental market,” meaning those compensated based on pre-disaster home or rental values were unable to find comparable housing options post-disaster.¹⁵¹ Providing sufficient compensation to people displaced by disasters can “expand the choice set for relocating residents, including lower flood-risk locations.”¹⁵² This expanded choice set is essential to ensuring survivors access “sustainable” durable solutions, as opposed to relocating to areas in which they remain exposed to future disaster risks, and thus future displacement.¹⁵³ While the federal URA would not apply to Lahaina residents displaced by the wildfire, it’s important for federal and state governments to consider other policy levers, including passing local and state URA equivalents with broader applications (discussed below), to provide disaster displacees with a broader “choice set,” mitigating the effects of displacement and potentially enabling those displacees to access comparable replacement housing more quickly post-disaster.

The URA also includes a significant fallback, the last resort housing provision, to provide displaced people with additional assistance where other URA benefits are not triggered or are inadequate.¹⁵⁴ The last resort housing provision allows the displacing agency to extend financial assistance to “displaced persons” who do not meet the residency requirements, or where there is no suitable replacement housing available, and empowers the displacing agency to use a wide range of measures to assist displaced persons.¹⁵⁵ For example, the displacing agency can provide replacement housing using federal funds where comparable replacement dwellings are not readily available within the statutory maximums of USD \$7,200 and USD \$31,000, for tenants and owners

149. *Id.*

150. *FACT SHEET: Acquisition of Property After a Flood Event*, FEMA (Nov. 13, 2018), <https://www.fema.gov/press-release/20230502/fact-sheet-acquisition-property-after-flood-event> [<https://perma.cc/ZY43-KWKB>].

151. Chelsea Davis, *A Studio for \$3,000 a Month? Skyrocketing Maui Rents Reave Wildfire Evacuees Alarmed*, HAWAII NEWS NOW (Oct. 10, 2023), <https://www.hawaiinewsnow.com/2023/10/10/fire-survivors-now-worried-about-rising-rents-west-maui/> [<https://perma.cc/8M5J-P6TF>].

152. Caroline M. Kraan et al., *Promoting Equity in Retreat Through Voluntary Property Buyout Programs*, 11 J. ENV'T STUD. & SCI. 481, 487 (2021).

153. See Blay & Crozet, *supra* note 17, at 1 (“[T]he [durable solutions] must be sustainable; the opted solutions should be feasible, viable and enduring.”).

154. See generally William M. Rohe & Scott Mouw, *supra* note 49.

155. See 49 C.F.R. § 24.404. The displacing agency must justify the provision of last resort housing assistance based on criteria in FHWA’s implementing regulations. *Id.* § 24.404(a).

respectively.¹⁵⁶ Other measures include building new homes; relocating an existing home; and purchasing land and/or a replacement home by the agency, which then sells, leases, or exchanges the land or home with the displaced person.¹⁵⁷ Additionally, if a tenant is considered low-income and the cost of the replacement dwelling, including rent and utilities, exceeds thirty percent of the tenant's income, the tenant can qualify for rental assistance payments under the Last Resort Housing provision.¹⁵⁸

3. *Relocation Advisory Services*

Relocation advisory services are another key benefit extended to displaced persons under the URA. The URA provides that the displacing agency “shall ensure that . . . relocation assistance advisory services . . . are made available to all persons displaced by such agency.”¹⁵⁹ Notably, immediately adjacent property owners that the agency determines might suffer “substantial” economic injury from the displacing activity are also entitled to this assistance.¹⁶⁰ To provide these services, the displacing agency must coordinate with federal, state, and local governments.¹⁶¹ The URA then lists specific requirements that the “relocation advisory assistance program” established by the displacing agency must satisfy. These include considering the needs and preferences of displaced persons and providing displaced homeowners and tenants with relevant information on comparable replacement dwellings, as well as relevant public programs.¹⁶² The assistance program must also provide “technical assistance” to help displaced persons apply for these programs.¹⁶³

4. *Additional Protections Under State and Local URAs*

Several states have enacted their own version of the URA. While some parrot the federal URA,¹⁶⁴ others extend additional protections. In California, Minnesota, and Tennessee, for example, the state URAs extend protections to people displaced by state-funded acquisitions, even if those acquisitions do not rely on federal funding.¹⁶⁵ California's URA goes one step further and requires relocation assistance payments to be adjusted annually based on increases in

156. See 42 U.S.C. § 4626; FHWA-HEP-05-031, *supra* note 60, at 14.

157. 49 C.F.R. § 24.404(c)(1).

158. *Id.*; see also Rohe & Mouw, *supra* note 49, at 66–67.

159. 42 U.S.C. § 4625(b).

160. *Id.*

161. 42 U.S.C. § 4625(d). FHWA guidance further states that when an agency displaces a person, a relocation counselor from the displacing agency will contact the displaced person to inform them of their rights and which payments they are owed under the URA, and to provide relocation advisory services. See FHWA-HEP-05-031, *supra* note 60, at 6.

162. 42 U.S.C. § 4625(c)(1)–(6).

163. *Id.*

164. See, e.g., Fla. Stat. § 421.55 (2024); W. Va. Code § 54-3 (2024) (requiring state agencies empowered to acquire property to comply with the requirements of the federal URA).

165. See, e.g., Tenn. Code § 13-11-102 (2024); Minn. Stat. § 117.52 (2023); Cal. Gov. Code § 7265.3 (2023).

rental costs.¹⁶⁶ Connecticut's URA, though more limited in the amount and range of benefits it offers compared to the federal URA, extends URA assistance to people displaced by municipal code enforcements.¹⁶⁷ The Connecticut URA also requires private landlords in violation of such codes to compensate the state for that assistance, and provides municipalities with a cause of action against the landlord to recover those costs.¹⁶⁸ Thus, even if someone displaced by a project does not qualify as a "displaced person" under the federal URA, they may still be entitled to protections under a state equivalent.

Municipalities can also adopt URA-like protections within their jurisdiction, which can offer additional assistance to displaced people.¹⁶⁹ For example, the city of Austin, Texas developed new policies to provide URA-like assistance for all buyouts to help "ensure consistent benefits between displaced owners and project areas."¹⁷⁰ The program, implemented by the city's Watershed Protection Department, exceeds both federal and state requirements, and applies to both voluntary and involuntary buyouts for flood risk reduction projects.¹⁷¹

IV. ENFORCING THE RIGHTS OF "DISPLACED PERSONS" UNDER THE URA

As discussed above, under the Guiding Principles, IDPs have the "right to request and receive" humanitarian assistance.¹⁷² In practice, this right implies the ability to directly seek federal assistance, and if that assistance is denied, to appeal that denial. However, despite the URA's specificity in delineating the rights and protections owed to qualifying "displaced persons," those same beneficiaries have limited mechanisms to challenge agency denials of assistance. FHWA regulations allow people to file a written appeal with the displacing agency if they believe they should have received URA assistance or received insufficient URA payments. While applicants have the right to legal counsel in the appeals process, they must pay for their own legal representation.

166. Cal. Gov. Code § 7265.3 (2023).

167. Jessica Schaeffer-Helmecki, Conn. Off. Legis. Rsch., *The Connecticut Uniform Relocation Assistance Act's Application to Municipal Code Enforcements*, at 2 (Dec. 31, 2020), <https://www.cga.ct.gov/2020/rpt/pdf/2020-R-0359.pdf> [<https://perma.cc/8XZC-VCNM>].

168. *Id.*

169. *See, e.g.*, Chi., Ill. Mun. Code § 5-13 (providing relocation assistance particularly on the protecting senior tenants in affordable housing displaced by renovation and rehabilitation); *see also* Long Beach, Cal. Mun. Code § 18.25 (providing owner-paid relocation payments and assistance to tenants displaced by code enforcement).

170. City of Austin Office of the City Auditor, *Audit Report: Flood Buyout Program* (Feb. 2017), https://www.austintexas.gov/sites/default/files/files/Auditor/Audit_Reports/Flood_Buyout_Program_February_2017_.pdf [<https://perma.cc/R2JY-4ZM5>].

171. *Managed Retreat Toolkit*, GEO. CLIMATE CTR., <https://www.georgetownclimate.org/adaptation/toolkits/managed-retreat-toolkit/voluntary-buyouts.html> [<https://perma.cc/AZ3A-YU87>]. (last visited Mar. 11, 2024).

172. Guiding Principles, *supra* note 15, Principle 3, ¶ 2.

If the applicant loses their appeal, their remaining recourse is to seek judicial review.¹⁷³ Federal courts have held that the URA does not create individual rights upon which a claim may be brought, meaning plaintiffs denied URA assistance must seek judicial review under the Administrative Procedure Act (“APA”), in which courts assess whether an agency’s final action is arbitrary and capricious.¹⁷⁴ Historically, courts have reviewed agencies’ URA-related decisions under a “deferential standard.”¹⁷⁵ This standard shifts the burden of proof onto the displaced person, creating a catch-22 in which the plaintiff must prove their eligibility under the URA, but may no longer have access to the documents they need *because* of their displacement.¹⁷⁶ The APA also does not allow claims for monetary damages.¹⁷⁷ Notably, the URA does allow private plaintiffs to recover attorneys’ fees if those expenses are “reasonably related to the litigation of [the] case.”¹⁷⁸

The leading cases on this question have been decided in the Fifth and Fourth Circuits. In 2009, the Fifth Circuit held in *Delancey v. City of Austin* that the URA does not create a private right of action for damages.¹⁷⁹ Citing the Supreme Court’s decision in *Gonzaga*, the Fifth Circuit noted that where Congress passes legislation pursuant to the spending power, “the typical remedy for state noncompliance with federally imposed conditions is not a private cause of action” but the termination of federal funds to the state.¹⁸⁰ The Fifth Circuit further noted that the URA lacks “rights-creating language,” and

173. FHWA-HEP-05-031, *supra* note 60, at 34–35.

174. *See, e.g.*, *Jackson v. U.S. Dep’t of Housing & Urb. Dev.*, 2020 U.S. Dist. LEXIS 259488 at *13 (2020) (holding that a challenge to HUD’s refusal to provide URA assistance should be assessed as arising under § 706(1) of the APA under an arbitrary and capricious standard); *see also* *Lowell v. Sec’y of Dep’t of Housing & Urb. Dev.*, 446 F. Supp. 859, 861 (considering a challenge that alleged that HUD regulations were inconsistent with the URA’s text under an arbitrary and capricious standard); *Highway Pavers, Inc. v. Secretary, U.S. Dep’t of Interior*, 650 F. Supp. 559, 561 (deciding whether a denial of relocation assistance was improper under an arbitrary and capricious standard).

175. *See, e.g.*, *M/V Cape Ann v. U.S.*, 199 F.3d 61, 66 (1st Cir. 1999); *Nat’l Tr. for Historic Pres. v. U.S. Dep’t of Veterans Aff.*, No. 09-5460, 2010 U.S. Dist. LEXIS 32015 at *14 (E.D. La. Mar. 31, 2010) (“the ‘arbitrary and capricious’ standard is ‘highly deferential’”). While recent Supreme Court cases have shifted how both agencies and courts apply the “arbitrary and capricious” standard, that precedent has yet to be applied in the URA context. *See* Jeevna Sheth & Devon Ombres, *Loper Bright and Relentless: Ending Judicial Deference to Cement Judicial Activism in the Courts*, CTR. FOR AM. PROGRESS (Jan. 10, 2024), <https://www.americanprogress.org/article/loper-bright-and-relentless-ending-judicial-deference-to-cement-judicial-activism-in-the-courts/>.

176. *See* Alessandra Jerolleman et al., *People or Property: Legal Contradictions, Climate Resettlement, and the View from Shifting Ground*, 124 (2024), <https://www.preventionweb.net/publication/people-or-property-legal-contradictions-climate-resettlement-and-view-shifting-ground> (“Proving one’s eligibility for government aid and disaster assistance demands supporting documentation that is time-consuming and often difficult to compile, especially in the aftermath of a flood that destroys paperwork, computers, photographs, and other personal belongings.”)

177. *See* 15A Moore’s Federal Practice - Civil § 105.45 (2023); 5 U.S.C. § 702.

178. *Haggart v. United States*, 168 Fed. Cl. 148, 155–56 (2023) (internal citation omitted). FHWA’s 2024 rule clarified reasonable attorney’s fees may include costs necessary to negotiate the purchase of a replacement site. 88 Fed. Reg. 36936.

179. 570 F.3d 590 (5th Cir. 2009).

180. *Id.* at 592–93 (quoting *Gonzaga University v. Doe*, 536 U.S. 273, 280 (2002)).

therefore does not show congressional intent to create a private right of action for monetary damages.¹⁸¹

Five years later, in *Clear Sky Car Wash LLC v. City of Chesapeake*, the Fourth Circuit held that sections of the URA imposing obligations on public agencies “create[] no individually enforceable rights” and thus provide no basis for a private action to remedy violations of those sections.¹⁸² The plaintiffs were thus also barred from enforcing the relevant URA sections under 42 U.S.C. § 1983, which can only be used to remedy the violation of rights already established.¹⁸³

V. APPLICABILITY OF THE URA IN A CLIMATE CHANGED WORLD

For millennia, people and communities have migrated as a form of adaptation to both conflict and disasters.¹⁸⁴ In the United States, as climate change increases the scale and frequency of disasters, some areas are becoming more costly or even uninhabitable. In response, governments are beginning to explore proactive migration away from high-risk areas as a potential adaptation response.¹⁸⁵ These efforts have been bolstered under President Biden, whose administration has made billions in federal funding available to help local, state, tribal, and territorial governments plan for and implement projects that can mitigate the impacts of climate change on communities in the United States.¹⁸⁶

Though some adaptation programs have mandated the forced relocation of residents in high-risk areas,¹⁸⁷ the majority are ostensibly voluntary. The Guiding Principles create an artificial binary between “forced” displacement and “voluntary” migration,¹⁸⁸ but in practice voluntary programs may contain forced elements. Many of the impacts from environmental disasters and hazards are not “natural,” but rather the consequence of where and how communities are built and maintained, with the greatest harms borne by historically

181. *Id.* at 594–95.

182. 743 F.3d 438 (4th Cir. 2014) (analyzing §§ 4651 and 4655 under the URA, governing mandatory real property acquisitions by federal and state agencies).

183. *See* 42 U.S.C. § 1983.

184. Dina Ionesco & Mariam Traore Chazalnoel, *Migration as an Adaptation Strategy to Climate Change*, U.N. INT’L ORG. ON MIGRATION, <https://weblog.iom.int/migration-adaptation-strategy-climate-change#> [<https://perma.cc/XT4P-WDSU>] (last visited May 16, 2024).

185. *See generally* Shi et al., *Equitable Buyouts? Learning from State, County, and Local Floodplain Management Programs*, 174 CLIMATE CHANGE 29 (2022) (examining five state, county, and local home buyout programs to reduce flood risk and facilitate managed retreat away from coastal zones and floodplains).

186. *See, e.g., FACT SHEET: Biden-Harris Administration Releases Fifth National Climate Assessment and Announces More Than \$6 Billion to Strengthen Climate Resilience Across the Country*, WHITE HOUSE (Nov. 14, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/14/fact-sheet-biden-harris-administration-releases-fifth-national-climate-assessment-and-announces-more-than-6-billion-to-strengthen-climate-resilience-across-the-country/> [<https://perma.cc/WZ3K-7C49>].

187. Amal Ahmed, *Torn Apart*, GRIST (Sep. 19, 2022), <https://grist.org/housing/torn-apart-mandatory-buyout-flood-houston-allen-field/> [<https://perma.cc/L4DR-Q32F>] (describing the mandatory buyout program in the Houston neighborhood of Allen Field).

188. Guiding Principles, *supra* note 15, Introduction, ¶ 2 (emphasis added).

marginalized and underserved communities.¹⁸⁹ Thus, the “choice” to leave one’s home is often a mix of forced and voluntary elements.¹⁹⁰ Furthermore, programs incentivizing migration away from high-risk areas, such as buyout programs, do not always provide the necessary protections or assistance to ensure participants access permanent, comparable housing.¹⁹¹ Thus, even if the initial choice to leave is voluntary, participants are not guaranteed access to sustainable, durable solutions, as prescribed under the Guiding Principles.

In this Section, we analyze whether the URA is likely to apply to people displaced by disasters, as well as people who participate in proactive climate adaptation programs, including federally-funded buyouts and community relocation. Where the URA does not apply, we assess whether the URA’s application in those contexts would facilitate the fulfilment of IDPs’ rights under the Guiding Principles. We find that there is a lack of clarity and consistency in whether the URA applies to disaster response and climate adaptation programs. Even if agencies determine that the URA does not apply to a particular program, agencies can incentivize participation by declaring such programs to trigger URA assistance on a project-by-project basis. The URA framework, including more ambitious state and local URAs discussed above, can also serve as a model for local governments to provide explicit guarantees of financial and advisory assistance to people receiving buyouts or other risk mitigation assistance to relocate to less risky areas. Institutionalizing and streamlining these practices can facilitate efficiencies in program development, and most importantly, lead to sustainable, durable solutions for at-risk communities.¹⁹²

1. *The URA in Federal Disaster Response*

Because the URA applies to federally-funded affirmative actions, people displaced by disaster-related impacts generally do not qualify for URA assistance. However, where disasters overlap with URA-qualifying projects, agencies have issued guidance clarifying if and how the URA applies. For example, after Hurricane Katrina, the FHWA issued a memo to its Mississippi

189. See Emmanuel Raju, Emily Boyd & Friederike Otto, *Stop Blaming the Climate for Disasters*, 3 COMM. EARTH & ENV’T 1 (Jan. 10, 2022).

190. See Hannah Perls, *U.S. Disaster Displacement in the Era of Climate Change: Discrimination and Consultation Under the Stafford Act*, 44 HARV. ENV’T L. REV. 511, 523 (2020) (mapping a “spectrum of human mobility in response to climate change-related hazards” in the US from forced displacement to voluntary migration).

191. See, e.g., *Improving Home Buyouts—Lessons Learned from Experience*, CLIMIGRATION NETWORK, at 2 (2023), <https://www.climigration.org/innovations-in-buyouts> [<https://perma.cc/RKJ7-7UQL>] (click “Find the report ‘Improving Home Buyouts – Lessons Learned from Experience (2023)’ in English and Spanish here” and then click “PDF: Community Leader Convening Synthesis Report”) (noting a key takeaway that “there was not enough money [from the home buyout program] to be made whole . . . particularly because of the difficulty in finding a comparable home.”)

192. See generally *Innovating to Make Home Buyouts Faster, Easier, and Fairer (2022)*, CLIMIGRATION NETWORK, <https://www.climigration.org/innovations-in-buyouts> [<https://perma.cc/RKJ7-7UQL>] (last visited Feb. 7, 2024) (click the link in “Find the white paper ‘Innovating to Make Home Buyouts Faster, Easier, and Fairer (2022)’ and complementary federal policy recommendations here”) (institutional support for buyout programs at the state, county, or watershed scale will enable buyout participants to have an “easier, faster, and fairer experience”).

office clarifying the eligibility of those who would be displaced by a highway repair project, but who were not present in their homes because they were first displaced by the hurricane.¹⁹³ The FHWA tasked states with determining whether, had the hurricane not occurred, the occupant “would have occupied the property . . . until displaced by the transportation project,” and thus could show “constructive residential occupancy.”¹⁹⁴ In addition, the applicant had to show they would otherwise qualify as a “displaced person,” imposing a heavy administrative burden on people who likely lacked access to the very documentation needed to receive assistance to access permanent housing options.¹⁹⁵ More recently, HUD issued guidance for Community Development Block Grant for Disaster Recovery (“CDBG-DR”) grantees, waiving certain URA procedural requirements to reduce the administrative burden on people participating in buyouts or receiving federal rental housing subsidies.¹⁹⁶

Federal courts have resisted attempts to expand the URA’s scope in the context of disaster-related displacement. As discussed above, in *Jackson v. U.S. HUD*, following Hurricane Harvey, residents of a HUD-subsidized property in Houston successfully advocated for HUD to transfer their housing vouchers to a new property after the private owners failed to remediate significant flood and other disaster-related damage.¹⁹⁷ The Fifth Circuit determined that the tenants were not “displaced persons” under the URA because the property from which the tenants had been displaced was not acquired by HUD, nor had the tenants shown that they were displaced due to rehabilitation or demolition.¹⁹⁸ The Fifth Circuit also rejected plaintiffs’ arguments that they were entitled to URA assistance under HUD regulations, noting that “[t]hough . . . the URA allows the DOT to prescribe ‘other displacing activity’ that can cause a party to become a ‘displaced person,’ the statute does not authorize HUD to expand the definition of this term.”¹⁹⁹

A similar attempt to obtain URA assistance following Hurricane Ida in Louisiana remains unresolved, but an early decision by the district court highlights the difficulties in obtaining URA assistance post-disaster. In *Shephard v. Houma Terrebonne Housing Authority*, discussed above, prior to Hurricane Ida, a

193. Memorandum from Susan Lauffer, Dir. Off. of Real Est. Serv., to Dir. of Field Serv., S. Div. Adm’rs - MS, LA on Guidance: Uniform Act Eligibility In Areas Impacted by Hurricane Katrina (Oct. 6, 2005), https://www.fhwa.dot.gov/real_estate/policy_guidance/katrinaguid.cfm [<https://perma.cc/4CJH-PUXF>].

194. These determinations must be made on a case-by-case basis. *Id.*

195. *Id.* The determination of “constructive residential occupancy” was made based on documentation and proof provided by the claimant. See also Bob Sullivan, *Katrina Victims Face Identity Crisis*, NBC NEWS (Sept. 13, 2005), <https://www.nbcnews.com/id/wbna9316512> (“Birth certificates, marriage licenses, even drivers licenses, personal checks and credit cards were washed away in the storm. Without the usual means of identifying themselves, evacuees face another major obstacle to normalcy.”).

196. HUD noted the waiver does not affect displaced tenants’ eligibility for URA relocation assistance. U.S. Dep’t of Hous. & Urb. Dev., *CDBG-DR Consolidated Notice Guidebook*, at 73 (Dec. 2023), <https://files.hudexchange.info/resources/documents/CDBG-DR-Consolidated-Notice-Guidebook.pdf> [<https://perma.cc/TQY4-HWFR>].

197. See *Jackson v. U.S. Dep’t of Hous. & Urb. Dev.*, 38 F.4th 463, 465–66 (5th Cir. 2022).

198. *Id.* at 467.

199. *Id.* at 468.

Louisiana housing authority submitted a five-year plan to HUD that included measures to renovate and modernize a public housing complex.²⁰⁰ The housing complex was then damaged by Hurricane Ida, and the housing authority determined that repairs could not be made without first relocating the tenants to FEMA trailers.²⁰¹ The tenants sought URA assistance, and filed for a preliminary injunction to obtain assistance before their FEMA trailer housing expired.²⁰² The district court declined to grant the preliminary injunction, stating that it remained disputed whether the cause of the displacement was the five-year plan or the damage from Hurricane Ida, with the court acknowledging that “[i]f [the tenants] were required to move due to damage from Hurricane Ida, they do not meet the definition of ‘displaced persons’ under the URA,” but that if the five-year plan was the displacing event, they would qualify.²⁰³

2. *The URA in Federally-Funded Climate Adaptation*

The URA may also apply in the disaster context when states and municipalities leverage federal funding for climate adaptation initiatives that displace renters or homeowners. One common example is public buyout programs, in which the government purchases private property in a high-risk area, demolishes the existing structures, and maintains the property as open space in perpetuity.²⁰⁴ Federally-funded home buyout programs are typically voluntary, with homeowners opting to participate in state- or locally-run programs.²⁰⁵ As discussed above, the URA does not apply to “voluntary” transactions, but the URA’s definition of “voluntary” is narrower than the colloquial definition (a “willing seller” or “amicable agreement”).²⁰⁶ Under the URA, a buyout program is considered “voluntary” and thus exempt from URA protections only if it satisfies specific criteria set forth under FHWA regulations. Notably, even if the program satisfies these criteria with regards to the homeowner-seller, displaced *tenants* are still entitled to URA assistance.²⁰⁷

As discussed above, under FHWA regulations, an acquiring entity with eminent domain authority must satisfy four criteria for the acquisition to be considered “voluntary,” and therefore exempt from URA protections. Specifically, the displacing agency must (i) ensure that all owners in a geographic area are “treated similarly”; (ii) not acquire the property as part of a project that

200. *Shephard v. Houma Terrebonne Hous. Auth.*, 2023 U.S. Dist. LEXIS 150973 at *1–2.

201. *Id.*

202. *Id.*

203. *Id.* at 6–8.

204. Diane P. Horn, *Flood Buyouts: Federal Funding for Property Acquisition*, CONG. RSCH. SERV. at 1 (Nov. 29, 2023).

205. Buyouts funded by FEMA must be voluntary, i.e., no homeowner can be required to sell their property to the government. *Id.* at 2. However, municipalities have used HUD funding to create mandatory buyout programs. *See, e.g., Ahmad, supra* note 187.

206. *See Relocation and Real Property Acquisition Handbook, supra* note 86, at 1.

207. *Id.* at 3 (“If a voluntary acquisition of tenant-occupied property will result in the displacement of the tenant-occupants, they will generally be eligible for relocation assistance.”)

intends to acquire all or nearly all of the property in an area within a fixed time period; (iii) inform the property owner in writing that the property will not be acquired through condemnation if amicable negotiations fail; (iv) inform the property owner in writing of the property's fair market value.²⁰⁸ While a buyout program could feasibly satisfy these criteria, in practice that is often not the case.²⁰⁹ Nevertheless, practitioners can understandably misconstrue the URA's requirements as exempting all voluntary programs in the colloquial sense. For example, New York City incorrectly stated in its 2021 Build It Back Policy Manual that "URA protections will not apply to homeowners participating in the Program, as homeowner participation is voluntary."²¹⁰ Importantly, broader application of the URA in the buyout context could address several guarantees under the Guiding Principles, including helping governments fulfill their duty to "prevent and avoid conditions that might lead to displacement of persons" by providing essential financial and advisory services.²¹¹

FHWA's implementing regulations also exclude other specific actions from URA protections. For example, the rules exempt acquisitions by land cooperatives where the property owner "as a condition of membership . . . has agreed to provide without charge any real property that is needed by the cooperative."²¹² This provision would exempt property owners who donate their land to a land or housing co-op from receiving URA protections. However, FHWA rules empower the displacing agency to apply URA protections to acquisitions of a less-than-full-fee interest in property on a project-by-project basis, including temporary and permanent easements.²¹³ Conservation easements have long been used in environmental conservation and preservation efforts, and are an increasingly popular tool to facilitate climate adaptation by preserving open space and natural disaster mitigation functions.²¹⁴ Agencies could therefore provide URA protections for people displaced by the imposition or creation of

208. 49 C.F.R. § 24.101(b)(1)(i)–(iv); see also *Real Estate Acquisition and Relocation Overview in HUD Programs*, HUDExchange, <https://www.hudexchange.info/programs/relocation/overview/#voluntary-acquisition-vs-involuntary-acquisition-of-property> [https://perma.cc/B9Z2-5F7P] (last visited May 16, 2024).

209. For example, at a recent workshop convening thirteen buyout recipients from across the country, including four from Houston, Texas, participants noted extremely variable experiences with the buyout program depending on the staff person they were working with, different timelines, and the availability of information about the program. See *Improving Home Buyouts*, *supra* note 191, at 1–2. See also Kraan et al., *supra* note 152, at 483 (documenting concerns in how buyout program design and implementation can produce procedural and interactional injustices).

210. *New York City Build It Back Single-Family Policy Manual, Version 2.1*, NYC 95 (Dec. 31, 2021), <https://www.nyc.gov/assets/housingrecovery/downloads/pdf/2021/NYC-BiB-Policy-Manual-Version-2.1.pdf>.

211. Guiding Principles, *supra* note 15, Principle 5.

212. 49 C.F.R. § 24.2(b)(4).

213. 49 C.F.R. § 24.2(c)(1).

214. For example, in 2003, Colorado Springs contracted with a local land trust to protect a 295-acre park with a conservation easement to prevent new residential development and create an "open space buffer" between the nearby National Forest and the community to reduce risks from wildfire. *Conservation Easement*, PLANNING FOR HAZARDS: LAND USE SOLUTIONS FOR COLORADO, <https://planningforhazards.com/sites/planningforhazards.com/files/media/PFH-ConservationE.pdf> (last visited Mar. 10, 2024) [https://perma.cc/UV3H-XEJD].

an easement, assuming the easement otherwise qualifies as a displacing activity triggering URA protections (e.g., is federally-funded or implemented).

While there are still significant data gaps in understanding the effectiveness and equity outcomes related to federally-funded climate adaptation, preliminary assessments on buyout programs suggest that flexible financial assistance and wrap-around technical assistance are essential components to achieving effective, equitable outcomes.²¹⁵ These are key gaps that could be addressed by the URA, which guarantees technical assistance designed to ensure that participants access sustainable replacement housing, and offers more comprehensive financial assistance, including compensation for moving and closing costs.²¹⁶ While states and municipalities can be well positioned to offer context-specific flexibilities and assistance, there is no federal backstop to ensure consistent application and accountability. State and local governments are also often restricted in their access to resources, struggling to provide the wrap-around technical assistance necessary to ensure successful outcomes in buyout programs. In a recent workshop convening buyout recipients and practitioners, the group found that “institutional buyout program support should exist across levels of government, and particularly at the state or sub-state scale”²¹⁷ and that, regardless of funding source, buyout programs should implement “benefits suggested or required under the [URA].”²¹⁸

While governments may be reluctant to trigger URA protections given the additional obligations, doing so could provide states and municipalities with the essential funding and technical assistance needed to institutionalize such support for future buyout programs, thereby producing more effecting outcomes. States and municipalities may therefore consider intentionally triggering or applying URA protections to help build essential capacity to provide comprehensive technical and financial assistance for current and future buyout participants, and thus more effective and sustained outcomes.

CONCLUSION

Every year, environmental disasters displace millions of people in the United States. In this article, we assess whether an existing statutory tool, the Uniform Relocation Act, could be leveraged to help federal and state governments fulfill key rights and obligations set out under the Guiding Principles on Internal Displacement to help disaster displacees access durable, sustainable housing. The URA establishes unique guarantees of wraparound financial and technical assistance for displaced persons. However, federal courts have limited the URA's scope to only cover affirmative, federally funded actions, meaning most people displaced by disaster-related impacts are ineligible for URA assistance. While the federal government has issued unprecedented funding

215. See *Innovating to Make Home Buyouts Faster, Easier, and Fairer*, *supra* note 192.

216. See Kraan et al., *supra* note 152, at 485–87.

217. *Innovating to Make Home Buyouts Faster, Easier, and Fairer*, *supra* note 192, at 2.

218. *Id.* at 19.

and resources to promote climate “resilience” and adaptation, these efforts are not paired with legal guarantees, leaving displaced people with little recourse to demand public entities recognize and uphold their right to access durable solutions. However, the URA and more ambitious state equivalents can provide important models for wraparound assistance programs that must accompany any managed retreat or strategic relocation program. By synthesizing the essential benefits and requirements of the URA, we hope to provide a key resource for displaced people and their advocates to seek URA assistance and identify opportunities for public entities to apply the URA or similar protections to ensure displaced people are able to access durable housing solutions post-disaster.