

# CURRENT DEVELOPMENTS

## CAPITALISM: A SINKING ISLAND WHY THE CURRENT REGIME IS UNABLE TO MEET THE MIGRATION DEMANDS OF CLIMATE CHANGE

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In 2020, around seven million people were living in displacement as a result of weather events.<sup>1</sup> It is estimated that by the year 2050, upwards of 143 million people in Sub-Saharan Africa, Latin America, and South Asia, which account for 55% of the population of “developing” countries, will be displaced as a result of climate change, a marked increase from current worldwide displacement figures.<sup>2</sup>

If serious policy steps are not taken within the next few years, a significant onslaught of climate disasters will ensue. We have passed the point of no return in preventing a 1.5-degree Celsius increase in atmospheric temperature, the point at which the scientific community has determined there will be mass extinction events.<sup>3</sup> We only have until 2026 to drastically reduce greenhouse gas emissions in order to reduce resultant greenhouse effects.<sup>4</sup>

The chances of meeting the more conservative Paris Agreement goal of capping atmospheric temperature increase at 2 degrees Celsius are just as slim. It is likely that the point of no return for a 2-degree increase is coming in 2035, or in 2042 if monumental efforts are taken.<sup>5</sup>

The failures of the 2021 United Nations Climate Change Conference (COP26) have made it clear that government leaders are not willing to rein in their respective country’s greenhouse gas emissions, nor are they willing to force corporations, to take any meaningful steps to reduce emission. This means the pleas of smaller island nations and countries in the Global South, whose people are most likely to be directly impacted and displaced by the disastrous effects the world’s must substantial polluters, of climate crises, continue to go unheard.<sup>6</sup>

With the Global North indicating it is unlikely to take any meaningful steps to curb the rising global temperature, mass climate migration is almost inevitable. With this in mind, it is important to ensure that human suffering is minimized to the greatest extent possible. To that end, existing immigration laws need substantial changes to allow worldwide freedom of movement.

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1. See *Global Report on Internal Displacement 2022*, INTERNAL DISPLACEMENT MONITORING CTR., <https://perma.cc/CF83-RVSR> (last visited Dec. 10, 2021).

2. Kanta Kumari Rigaud, Alex de Sherbinin, Bryan Jones, Jonas Bergmann, Viviane Clement, Kayly Ober, Jacob Schewe, Susana Adamo, Brent McCusker, Silke Heuser & Amelia Midgley, *Groundswell: Preparing for Internal Climate Migration* (World Bank, License: CC BY 3.0 IGO, 2018), <https://perma.cc/MN5G-KMEB>.

3. See Vivian Sorab, *Too Little, Too Late? Carbon Emissions and the Point of No Return*, YALE ENV’T REV. (Mar. 26, 2019), <https://perma.cc/CX6L-6L36>; Lauren Sommer, *This is What the World Looks Like if We Pass the Crucial 1.5-Degree Climate Threshold*, NPR (Nov. 8, 2021), <https://perma.cc/AFZ6-RWSC>.

4. See Sorab, *supra* note 3.

5. See *id.*

6. See Lucy Handley, *Pacific Island Minister Films Climate Speech Knee-deep in the Ocean*, CNBC (Nov. 8, 2021), <https://perma.cc/9RMU-GF3S>.

## I. THE CURRENT STATE OF CLIMATE MIGRANTS UNDER THE LAW

Although current rates of climate migration are lower than the rates anticipated in the near future, the Global North has shown that it is unwilling to provide meaningful protection to those fleeing their homes due to climate change. Countries in the Global North often send climate migrants directly back to their countries of origin, forcing them into the very dangers from which they fled.

The United States currently has no method of protecting or recognizing persons displaced by climate disasters.<sup>7</sup> At the moment, U.S. law does not recognize those displaced by climate events as “refugees,” and therefore denies them the protections accorded by that status.<sup>8</sup> The Immigration and Nationality Act defines a refugee as

any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or . . . in such special circumstances as the President after appropriate consultation . . . may specify, any person who is within the country of such person’s nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>9</sup>

This statutory framework, which focuses primarily on the persecution of individual freedoms, does not provide for the recognition of the devastating effects of climate change on impacted populations when determining refugee status.<sup>10</sup>

The same issues permeate existing law in the European Union. Current E.U. law, as well as the national laws of member states, offer protection to persons who have a fear of persecution on account of race, religion, nationality, or political opinion, but do not offer protection to those displaced by environmental disasters.<sup>11</sup>

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7. See Erol Yayboke & Janina Staguhn, *A New Framework for U.S. Leadership on Climate Migration*, CTR. FOR STRATEGIC & INT’L STUD. (Oct. 23, 2020), <https://perma.cc/8TSS-CEW9>; 8 U.S.C. § 1101(a)(42).

8. See Yayboke & Staguhn, *supra* note 7.

9. 8 U.S.C. § 1101(a)(42).

10. See Yayboke & Staguhn, *supra* note 7.

11. Albert Kraler, Caitlin Katsiaticas & Martin Wagner, *Climate Change and Migration*, EUR. PARLIAMENT 45–46 (2020), <https://perma.cc/RK9V-EMHF>.

Likewise, the United Nations does little for climate migrants beyond recognizing their existence. The United Nations High Commissioner for Refugees has remarked that “people displaced across borders in the context of climate change and disasters may in some circumstances be in need of international protection.”<sup>12</sup> The U.N. provides legal advice to climate migrants but does not offer any meaningful protection for international climate migrants, with many protections limited to the protection of individual freedoms as in the United States.

No western nation has a framework that is adequate to protect the hundreds of millions of people who will face mortal danger due in large part to the actions of corporate entities housed in their nation-states. Refugee and asylum laws, much like all other aspects of Western law, focus on maintaining neoliberal notions of personal freedom, rather than ensuring the availability of food and housing to those forcibly displaced by large-scale disasters.

## II. A SLIGHT ASIDE: WHY IS THE LAW THE WAY IT IS?

It would be irresponsible not to note why the current immigration regime exists, as the capitalistic reasoning in maintaining and strengthening borders is prescient in considering why Western nations have not done more to protect those impacted by large-scale climate change.

The function of borders, from a Marxist perspective, is to maintain a labor-differential that allows for super-exploitation of labor from the Global South.<sup>13</sup> While worker-citizens within the nations of the Global North experience exploitation in the form of wage labor and separation from the means of production, they are afforded protections via national citizenship. On the other hand, workers from the Global South, who often occupy service and agricultural positions in well-off areas of the Global North,<sup>14</sup> are not afforded any of the protections inherent in citizenship in the Global North. These workers are therefore easily exploited, usually in the forms of persecution, pitiful wages, dangerous working conditions, and legal threats such as deportation. It is in capitalists’ best interest to maintain this labor differential. Keeping laborers from the Global South in legal peril allows for their exploitation within the Global North and keeping laborers in the Global South allows for the extraction of wealth from the South to the North. Borders facilitate this work. By controlling the influx of laborers from the South while denying those laborers the protections afforded to workers in the North, wages fall, and exploitation of the working class is made facile.

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12. Yayboke & Staguhn, *supra* note 7; *Climate Change and Disaster Displacement*, UNHCR, <https://perma.cc/VJE4-RSFT> (last visited Dec. 10, 2021).

13. See JOHN REYNOLDS, *FORTRESS EUROPE, GLOBAL MIGRATION & THE GLOBAL PANDEMIC* 348 (Cambridge Univ. Press, 2020).

14. See Siyuan Yin, *Towards a Marxist Critique of the Political Economy of Migration and the Media*, 19 *tripleC* 231, 236 (2020).

At the same time, capital and goods are allowed to flow freely across borders globally. Here we can see the obvious fallacy of neoliberal globalization: the capitalists tell us they secure the borders for national security (which is true, insofar as the state is simply the employee of the capitalists), all while allowing unfettered movement of capital. Security indeed: security from working-class consciousness and solidarity.

From this explanation, it becomes clear why the West has been mostly unwilling to consider an alternative immigration framework in general, especially with respect to climate-driven migration. Any alleviation of border controls will provide the working class with more power. Any grant of rights, asylum, refugee, or otherwise, gives migrants greater power to fight back against their dangerous working conditions and unfair, exploitative wages, placing them in a slightly less precarious legal position. Therefore, it seems that without massive public support and mobilization on behalf of climate migrants, creating a framework for protecting people displaced by climate crises is untenable under the current system. In short, increased freedom of movement serves as an answer to exploitation.<sup>15</sup>

### III. THE POTENTIAL IMPACTS OF CURRENT LEGAL FRAMEWORKS

The inadequacies of the current immigration frameworks in the United States and the rest of the Global North are evident. In the face of a multi-year drought and chronic violence brought on by U.S. intervention in the region, people from the Northern Triangle, a region comprised of El Salvador, Guatemala, and Honduras, have migrated north to the United States and Mexico in large numbers.

Over the past five years an estimated 407,000 people have migrated northward annually from the Northern Triangle.<sup>16</sup> Rather than assisting these migrants in any meaningful way, the primary U.S. response to their forced displacement has been to expel these migrants, with nearly 3 million court-mandated deportations occurring during the Obama administration.<sup>17</sup> The U.S. policy towards Northern Triangle migrants only became more fascist during the Trump administration, which implemented a zero-tolerance policy for migrants attempting to enter the United States without a visa, resulting in the infamous policy of parent-child separation.<sup>18</sup> The Trump administration also suspended what little aid the United States was providing to the Northern Triangle and entered into asylum agreements with governments in the Northern Triangle aimed at forcibly deporting migrants detained by U.S.

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15. See Chris Szala, *Reading Marx on Migration*, MR ONLINE (Jul. 30, 2018), <https://perma.cc/UP6X-CWD7>.

16. Amelia Cheatham & Diana Roy, *Central America's Turbulent Northern Triangle*, COUNS. ON FOREIGN REL., <https://perma.cc/6W8J-LJ3R> (last updated Jun. 22, 2022).

17. See *id.*

18. See *id.*

immigration enforcement to other Central American nations.<sup>19</sup> The Biden administration has curbed some of the more despicable Trump-era policies, but still engages in mass deportations to migrants' country of origin. The Biden administration continues to focus on strengthening border security, rather than taking a humane approach to climate migration.<sup>20</sup>

It is clear that, without substantial changes to the U.S., E.U., and U.N. approaches to climate-driven migration, there will be massive casualties in the Global South. It is necessary to abandon the current immigration structure. The question is: how?

#### IV. FIXING THE SYSTEM: IS REFORMISM ENOUGH?

As the climate crisis has worsened, many centrist commentators have posed several potential solutions to the law's lack of recognition for climate migrants. This section will discuss the two most commonly suggested solutions and their potential pitfalls. While this section focuses primarily on U.S. proposals, they easily translate across the entire Global North.

##### A. *Creating Temporary Climate Protected Status*

One of the most common proposed solutions is granting Temporary Protected Status (TPS) to climate migrants.<sup>21</sup> This proposal uses the authority of the Homeland Security Act of 2002, which confers the Secretary of the Department of Homeland Security the authority to provide TPS to immigrants *within* the United States who are unable to return to their country of origin due to conflict or disaster.<sup>22</sup> This authority has been used to grant TPS to victims of the 2010 earthquake in Haiti, the 2001 earthquake in El Salvador, and the 1991 hurricane in Honduras and Nicaragua.<sup>23</sup>

Current proposals suggest expanding the preexisting TPS program and applying it migrants outside the United States. This would be in conjunction with the creation of an independent, non-partisan, board of climate scientists to determine which climate disasters "count" as severe enough to warrant granting TPS.<sup>24</sup>

There are several issues with this proposal, not the least of which is the feasibility that it would be passed into law under current system of government in the United States. The immediacy of the climate crisis necessitates a near-immediate change to our existing immigration regime in order to avoid mass casualties around the globe, especially in the Global South, which already

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19. *See id.*

20. *See id.*

21. *See* Yayboke & Staguhn, *supra* note 7; *Task Force Report to the President on the Climate Crisis and Global Migration: A Pathway to Protection for People on the Move*, REFUGEES INT'L (Jul. 14, 2021), <https://perma.cc/W2A6-Q9AH>.

22. *See* Yayboke & Staguhn, *supra* note 7.

23. *See id.*

24. *See id.*

finds itself disadvantaged as a victim of colonialism and capitalism. The United States government has already shown itself unwilling to be humane when it comes to border policing, whether a Democrat or Republican holds the executive branch. There is no evidence to suggest that this will change in the near future, and by the time the full force of the climate crisis is upon us, it may be too late to act.<sup>25</sup>

Even if the expansion of TPS were to pass into law, it must be recognized that it is not a perfect or permanent solution. The temporary, highly discretionary nature of the protection provided by this proposal leaves much to be desired. Despite the requirement that the scientific board be non-partisan, it is unlikely that such a board will be fully removed from the political process. If the COVID-19 epidemic has shown us anything, it is that it is possible to find someone with a degree to say whatever one likes. Much like the Supreme Court, the proposed TPS Board would likely be permeated by partisan politics and become another battleground for immigration politics.

Additionally, there should be concern about expanding the United States' police power beyond its borders. A TPS program that provides protection to climate migrants abroad looks promising at first glance and, assuming benevolent intentions on behalf of the United States, could genuinely aid many climate migrants who would otherwise be denied protection. However, such a program allows the United States to determine the status of persons not within its borders. Whether this is problematic is up for debate, but activists should be wary of expanding the power of a nation that has acted time and again to ferment unrest in the rest of the world for its exploitative advantage.

### B. *Creating a Climate Migrant Resettlement Program*

Another common suggestion among reformist non-profit organizations is to create a Climate Migrant Resettlement Program (CMRP).<sup>26</sup> This proposal aims to create a category for climate migrants within the existing U.S. asylum system.<sup>27</sup> Like other asylum seekers, climate migrants would apply for asylum after their arrival in the United States. To qualify for asylum, migrants would need to demonstrate the appropriate level of hardship as determined by the TPS Board mentioned in the prior section.<sup>28</sup> Those granted asylum would be able to apply for lawful permanent resident status and, eventually, citizenship.<sup>29</sup>

This proposal suffers from the same political woes as the TPS proposal. As Presidential administrations become more and more hostile to migrants,

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25. With these momentous challenges in mind, it is important to note that fighting for these kinds of reforms is nevertheless very important. Small changes that save even a few lives are wins. However, we must keep the end goal of total liberation in mind and recognize that any small win is not enough.

26. See Yayboke & Staguhan, *supra* note 7.

27. *See id.*

28. *See id.*

29. *Id.*



further decreasing the amount of admittees into the country every year, it seems unlikely that any proposal which aims to expand migrant protections is going to be able to survive the legislative process.

Additionally, this proposal integrates all of the current issues in the U.S. immigration system into a new system for climate migrants. There is a century's worth of data which displays how the U.S. immigration system harms people, and all this proposal would do is grant the United States increased power over more people, with the elusive promise of U.S. citizenship offered as a light at the end of the tunnel. Should this proposal pass into law, it would function to help only a small percentage of those whose climate change related displacement is anticipated in the next 25 years. While it may help a few, this proposal is nowhere near as radical as is necessary to react to the imminent climate catastrophe.

It is clear, then, that while these proposals may help a small percentage of the hundreds of millions likely to experience displacement in the next quarter century, they do not do nearly enough. These proposals require integration of climate migrants into a pre-existing immigration framework which has shown itself unable to deal with even small-scale humanitarian disasters. Beyond the proposals' inefficacy on a larger scale, implementing these reforms strengthens the Global North's police state and grants those police states legitimacy by relegating further power to them. Likewise, making climate migrants further dependent upon the policies and finances of the Global North, which ultimately caused the current climate crisis, will further degrade what little self-determination and solidarity communities in climate-change stricken areas have." Rights" will be prescribed on a worldwide basis by the U.S., E.U., and U.N. to an even greater extent than they already are.<sup>30</sup> This will ultimately lead to even fewer opportunities for solidarity among communities in the Global South, as they must follow rules set by the Global North in order to survive. As radical changes to our environment occur, radical solutions are required to minimize human suffering and maximize cooperation and solidarity among peoples.

## V. A REVOLUTIONARY, NO BORDERS BODY POLITIC

Since the end of World War Two, the major powers of the West have conceptualized migration as a problem to be solved rather than as a natural occurrence.<sup>31</sup> This framing has established transient populations, whether displaced by force or migrating voluntarily, as vulnerable populations.<sup>32</sup> However, people have people have migrated throughout the world for millennia. The conception of migration as an implicitly or explicitly criminal act

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30. See ALEXANDER BETTS, *SURVIVAL MIGRATION: FAILED GOVERNANCE & THE CRISIS OF DISPLACEMENT* 176 (Cornell Univ. Press, 2013).

31. See Bridget Anderson, Nandita Sharma & Cynthia Wright, *Editorial: Why No Borders?*, 26 *TORONTO: CTR. FOR REFUGEE STUD., YORK UNIV.* 5, 9–11 (2009).

32. See *id.*



came only after the end of the slave trade, when the control of labor via nationalism and securitized borders became necessary to control labor flow and keep the cost of labor as low as possible.<sup>33</sup> Therefore when activists consider the border, they must not only ask themselves how to make bordered areas more equitable to migrants, but question why we even have bordered areas in the first place. A glance into the past illuminates that borders were created with inequity in labor in mind, and therefore any iteration of border security is inherently inequitable. The reason borders do not work to protect vulnerable populations is quite stark: borders were not created to protect anyone except the capitalists and their pocketbooks.

A. *What is a No Borders Body Politic?*

The need to abolish borders has always been prescient and immediate. Now, however, there is a greater urgency inherent in abolition when considered under the lens of climate migration. People are expected to begin migrating in unprecedented numbers in the next quarter century, and these migrants will most often do so by necessity. We cannot approach migration for survival under the assumption that those who migrate are committing a criminal act. We must take the opposite approach. We must assume that those who migrate do so with no ill-will and shake loose the chains of capitalism-colonialism masquerading as nationalism.

The idea of border abolition is not new. As Anderson, Sharma, and Wright note in their editorial *Why No Borders?*, since the first border restriction was set, people have disregarded border regimes and advocated for their banishment.<sup>34</sup> The current theoretical framework for a No Borders politic came about in the 1990s and has been refined in the last two decades.<sup>35</sup> A No Borders body politic calls attention to borders' function as a creator of class differential and exploitation, not as a consequence. It questions "the legitimacy of the global system of national states itself and the related global system of capitalism."<sup>36</sup> It requires reshaping the world in a way incompatible with capitalism and nationalism. It requires a focus on common rights, which are: embedded in a particular ecology, informed by the practices of the community; driven by the proletariat, entered into by labor; created by collective, social practice; and are not determined by national sovereignty.<sup>37</sup> A No Borders body politic requires considering the world from the perspective of people, who may come and go as they please, rather than from the perspective of capitalists and their governmental proxies. As the climate crisis worsens, we must consider the world through the eyes of the migrant, those forcibly displaced by climate disasters and attendant geopolitical conflicts,

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33. *See id.* at 10.

34. *See id.* at 11.

35. *See id.*

36. *Id.*

37. *See id.* at 12.

rather than through the lens of the nation, who acts on behalf of oil companies whose only aim is to accumulate capital. To adopt a No Borders body politic, one need only accept one truth: the plight of the laborer is far superior to the maintenance of capitalist wealth.

B. *Mutual Aid as a Driving Force Towards a Borderless World*

The adoption of No Borders body politic necessitates the degradation of the power and authority of the capitalist state. How this degradation is to be accomplished will be a point of debate as discussions of border abolition become more widespread and more seriously considered as an alternative to the current nationalist regime, but there are several ways to degrade state power. The most promising of these approaches, at least in the short term, is the creation and expansion of community-based mutual aid programs. These programs create infrastructures that provide for communities in ways capitalist institutions have refused to do. As mutual aid programs provide for communities, they can expropriate the authority claimed by the pre-existing state. In this way, if mutual aid programs are administered according to the tenets of democratic centralism, power is relinquished from the state and placed back into the hands of the community and administrators of the mutual aid program. In short, the expansion of mutual aid programs is inversely related to the authority of the capitalist state.

The most effective mutual aid program in the United States was the Black Panther Party's (BPP) health and medical program. The BPP created wide-reaching community health and nutrition programs, which ameliorated some of the malnutrition often inherent in the Black poverty induced by the white-supremacist, capitalist policies of U.S. state and federal Governments.<sup>38</sup> The BPP ran its community clinics, provided groceries and meals, and published community-oriented newspapers.<sup>39</sup> The BPP's mutual aid networks were so successful that they drew the ire of J. Edgar Hoover and the FBI, which attempted to discredit the BPP's programs, taking violent action against the BPP, culminating in violence against members and their beneficiaries including the murder of BPP leader Fred Hampton and other prominent BPP members.<sup>40</sup>

The BPP was able to establish an infrastructure largely independent from the white-supremacist, capitalist U.S. government and showed that independent infrastructure can allow for the accelerated proliferation of revolutionary thought. Following the BPP's example, activists and working people should develop community mutual aid structures governed by communal ideals, one of which is the abolition of borders. Once communities along borders have

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38. See ALONDRA NELSON, *BODY & SOUL: THE BLACK PANTHER PARTY & THE FIGHT AGAINST MEDICAL DISCRIMINATION* 4 (Univ. of Minn. Press, 2011).

39. See *id.* at 4-7.

40. See Alicia Maynard, *The Assassination of Fred Hampton*, LAKE FOREST COLLEGE: DIGITAL CHICAGO, <https://perma.cc/P3TR-72JA> (last visited Nov. 20, 2022).

decided to ignore borders, it will become infinitely more difficult for state authorities to maintain them.

To establish the most effective mutual aid infrastructures, the goals of a mutual aid program must act as a north star, guiding the decisions of the mutual aid program's governing body in order to assure the needs of the community are met. A primary concern with mutual aid is its potential to become charity rather than community aid.<sup>41</sup> This occurs when access to materials becomes contingent on an arbitrary moral code (see, e.g., the Salvation Army, U.S. programs which require drug-testing for eligibility, etc.). Mutual aid efforts must also avoid saviorism and self-congratulation, which alienate the communities mutual aid programs are supposed to assist.<sup>42</sup> Likewise, neo-liberal co-optation, replacement of social safety nets with family and church, which again, becomes charity, should be avoided.

A mutual aid program must also be governed by the community the aid network serves. Therefore, funding from corporate or government groups should be avoided, as dependence on these monetary grants often allow the grantors to make capitalistic policy decisions.<sup>43</sup> It is vital that the decision-making body be broadly construed. Concentrating power in the hands of a few people often dilutes the needs of the community. Modified democratic centralism through horizontal decision-making apparatus ensures the voices of the most marginalized groups are heard.<sup>44</sup> "Consensus decision making requires participants to bring forward proposals to be discussed and modified until everyone is sufficiently satisfied that no one will block the proposal."<sup>45</sup> In this way, no one group gets everything they want, but ideally every group gets what they need. Active participation is key.

#### CONCLUSION

The existing immigration framework has proven that it was not created to protect people, neither in normal circumstances nor in crisis. As the climate crisis worsens and forcibly displaces more and more people, the only way to mitigate the damage and prevent massive casualties is to completely rethink the way we consider borders, going so far as to question the necessity of their existence. While reformist measures may serve as steppingstones on the way to a more radical reimagining of our bordered world, they will never be sufficient, and they will never transform the inherently exploitative concept or borders into a humanitarian one. The time to bargain with the capitalist state has come and gone. It is time to revolutionize our world.

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41. See Dean Spade, *Solidarity Not Charity: Mutual Aid for Mobilization & Survival*, 38 Duke Univ. Press 131, 140–141 (2020).

42. See *id.* at 141.

43. See *id.* at 142–46.

44. See *id.*

45. *Id.* at 145.