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HURRICANE KATRINA: WHEN A CRISIS IS AN OPPORTUNITY IN GOVERNMENT INNOVATION FOR MIGRATION SOLUTIONS

By Camilo Mantilla¹

INTRODUCTION

Host and transit nations have moral and legal obligations to protect vulnerable populations—including migrants and individuals seeking humanitarian relief—even during special circumstances. Record numbers of arrivals at the United States-Mexico border, and the growing recognition that migration is increasingly hemispheric, has pushed the United States ("US") immigration framework into a high degree of dynamism regarding humanitarian and legal immigration policies. The US, as well as other countries of destination and transit, face significant challenges managing immigration in times where migration flows around the world are shifting, and directly impacting local politics, infrastructure, and host community dynamics. With changing global landscapes and migration patterns, the need for legal innovation to ensure reliability, integrity, and purpose of humane migration frameworks that uphold fundamental principles of human rights and freedoms for migrants is paramount.¹

In the absence of national or country level solutions that provide prompt and tailored humanitarian relief to migrants in need, legal innovation is necessary to streamline processes in response to changing specific community and regional circumstances, and to aid efficiency of immigration adjudication. It is not uncommon for immigrants, including asylum seekers and refugees, to face legal hurdles and barriers accessing rights, particularly in immigration justice. By identifying opportunities for legal innovation in complex, uncertain, and special circumstances affecting a community, it can substantially aid in prioritizing mechanisms that enhance access to migrant protection. As such, protection can be granted in the form of access to basic and essential legal rights, protection before the law, due process, and ensuring fair treatment for individuals

navigating the immigration system in critical times that require flexible systems of governments.

This article explores the circumstances, considerations, and potential adaptations for government innovation of approaches to immigration management—and most importantly, a system that allows flexibility in the application of immigration rules to be tailored to specific issues or circumstances. This article explains the legal underpinnings and practical realities of the government's preparedness and response capabilities as it relates to the migration policy framework. Through understanding the strengths, limitations, and ongoing challenges within this framework, policymakers, legal practitioners, and disaster management professionals can foster resilience and better safeguard communities and migrants during adverse times.

Furthermore, this article discusses examples and facts around the intricate framework and circumstances within which the United States government responded to disasters of varying scales—specifically, Hurricane Katrina. It discusses the normative events and policy decisions subsequent to Hurricane Katrina in the Gulf Coast Region, where a natural disaster (partly attributable to man-made consequences) prompted federal authorities to exercise discretion in the existing immigration enforcement and framework by instituting policy measures and innovations for disaster relief and recovery, which had unique implications for international and domestic immigration frameworks and dynamics.

But, this article is not positioned to discuss and critique the decisions and government response for the Hurricane Katrina crisis, for the aftermath of the Hurricane has been extensively researched and

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discussed. Rather, this article seeks to illustrate that, despite the challenges, some of the official decisions that were part of the institutional response to the crisis resulted in opportunities and tools to address highly sensitive political immigration matters by responding to concrete humanitarian needs. Thus, by using Hurricane Katrina as a case study, this article hopes to shed light on opportunities for innovation and adaptations—even in a nation where immigration laws are strictly and constantly enforced. Ultimately, the purpose is to identify and contribute to the discussion around how governments can innovate and create humane solutions for natural and man-made crises through existing rules and frameworks. It explores intricacies where legal mandates, interagency cooperation, and practical strategies can converge for a government's readiness to confront such challenges.

Moreover, this article discusses viable legal mechanisms empowering federal, state, and local authorities to coordinate efforts in disaster response, with a migration perspective. It examines the practical considerations and logistical complexities inherent in executing these plans on the ground, considering specific local community needs and how solutions are feasible by embracing a migration approach. If events of this nature, such as those surrounding Hurricane Katrina, prompted the government to take aggressive policy and legal measures that implied a shift in policy making and interpretation—especially for immigration enforcement—what other circumstance can and should prompt governments to adopt similar measures? Can governments adapt the application of rules in response to a human or natural crisis, that in turn result in innovation for solutions in another field, like immigration?

I. GOVERNMENT RESPONSE TO CRISES AND IMMIGRATION

In the search for migration solutions, the US comes to mind when discussing immigration enforcement, illegal immigration, and most recently, state, city, and federal immigration enforcement and solutions. While immigration laws and policies in the US are complex and often contentious between states, courts, and even governments at different levels, they are perceived to be, and most of the time are, strictly enforced by federal authorities. Part of the

debate overlooks what is available at the community level, which includes the national level, in terms of protection of migrants, which in most circumstances is already available and does not require new creations. In the aftermath of Hurricane Katrina, the federal government adopted specific measures to enable recovery and reconstruction in the Gulf Coast. This had notable and important impacts on domestic (particularly regional) immigration dynamics.

The combination of local specific immigrant circumstances and federal measures to address a crisis served as pull factors for immigrants inside and outside the US, impacting the immigration and community landscape in the long run. After Hurricane Katrina, in the Gulf Coast region, the system of immigration rules was interpreted (and not applied) in response to the specific human and recovery reconstruction needs, thereby directly acknowledging the local and specific human, demographic, legal, and practical considerations unique to this domestic crisis. The unintended consequences of the federal government's waiving enforcement of immigration rules, subsequent adaptations, and modifications of similar measures can result in immigration solutions for similar scenarios.

A. EXAMPLES OF GOVERNMENT DISCRETION IN IMMIGRATION SOLUTIONS

A relatively known and historical application of such measure is humanitarian parole ("HP" or "parole") that allows certain individuals to enter the US for urgent humanitarian reasons or significant public benefit.² The statutory provisions for parole do not define urgent humanitarian reasons, significant public benefit, or case-by-case basis, thereby leaving substantial debate over the manner in which the executive branch exercises discretion in invoking what is commonly known as humanitarian parole authority.³ Since 1952, the US government, by way of statute, has invoked its parole authority and used it towards multiple interventions—from the Hungarian refugee crisis in 1956, Cuba, and more recent examples, including parole for "international entrepreneurs" and orphaned children from Haiti following the 2010 earthquake.⁴ These were all statute-enabled government responses to a specific period and circumstances, with consideration of

urgent humanitarian reasons or public benefit; even though not necessarily always a natural disaster, they nonetheless demonstrate the flexibility and discretion in application.

Other available and viable examples of agency action for immigration enforcement derived from "agency discretion by law" that allowed temporary suspension of enforcement of immigration rules.⁵ A decision by executive branch officials exercising inherent authority to manage its policies includes the Deferred Action for Childhood Arrivals ("DACA"). The administration, based on humanitarian concerns, instituted categorical deferred action programs well into the modern era.⁷ Such initiatives have been interpreted by the courts as narrow exceptions that include an agency's decision not to institute an enforcement action.⁸ This has been possible, in part, to shared recognition of executive discretion and policies by Congress and the Supreme Court; records of such executive discretion date back to the early twentieth century. In this regard, the US Supreme Court has repeatedly held that the "authority to control immigration... is vested *solely* in the Federal government," finding the basis for this exclusive power in Article I of the Constitution.⁹ Article I grants Congress the authority to "establish a uniform Rule of Naturalization" and to "regulate Commerce with foreign Nations."¹⁰

Further adaptation of discretionary authority were introduced following the terrorist attacks on September 11, 2001. For instance, the federal government granted relief from immigration sanctions, specifically deportation, to the following notable categories of individuals: noncitizens affected during the domestic terrorist crisis of 9/11; those who were not legally admitted to the United States; and even those whose temporary visas had expired were permitted to stay in the country temporarily. Following the 9/11 attacks, family members of victims who were dependent on the victim's immigration status were assured they should not be concerned about facing immediate removal from the US.¹¹

The US Temporary Protected Status ("TPS")¹² is yet another example of a government program where agency discretion by the Secretary of Homeland Security is used to designate TPS status to a foreign country due to conditions in the country that

temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. Moreover, United States Citizenship and Immigration Services ("USCIS") may grant TPS to eligible nationals of certain countries (or parts of countries) already in the United States.¹³ Eligible individuals without nationality who last resided in the designated country may also be granted TPS. This designation is usually based on certain temporary conditions in the country, such as: ongoing armed conflict (civil war); an environmental disaster (an earthquake or hurricane); an epidemic; or other extraordinary and temporary conditions.¹⁴ During a designated period, the beneficiaries are preliminarily eligible for a group of considerations and rights that include employment authorization and other related prerogatives.¹⁵ While TPS is different regarding discretion to defer action, it nonetheless acknowledges and addresses similar immigration issues based on different, but relative, circumstances.

Understanding that TPS designation is for another country, and exceptional circumstances permit similar government discretion for domestic situations, why are agencies and governments reluctant to adapt solutions and innovation in policy making for immigration? With these examples in mind from US history of leveraging resources to address immigration circumstances in response to domestic or international crisis, including special circumstances, demonstrates that the government, when enabled by statute and agency discretion, can adopt special measures to impact immigration status of individuals in the country—especially during specific circumstances and times of crises, like the ones derived from Hurricane Katrina and the Gulf Coast.

B. CASE STUDY: US FEDERAL RESPONSE TO HURRICANE KATRINA, IMPLICATIONS FOR HUMANE MIGRATION

The federal government can adopt both a similar approach to, and logic towards, relatable circumstances in which there is evidence of a prompt need for humanitarian intervention. During Hurricane Katrina, the federal government adopted a humanitarian stance to address a domestic crisis, in direct relation to immigration enforcement. A discretionary measure of federal immigration authority, intended to address

relief and recovery of the distress caused by the Hurricane, resulted in shifting local and international migration dynamics and thus the landscape for communities and migrants during the crisis. The events surrounding Hurricane Katrina prompted the federal government to devise and apply a lawful and discretionary adaptation and interpretation of federal rules. In turn, these adaptations had a direct impact on the local immigration landscape, as well as local immigration dynamics. This manifestation, during Katrina, of government creativity and maneuverability enabled the application of federal provisions—originally intended to restrain—to address a humanitarian crisis.

The media and official findings concluded that "Hurricane Katrina Was not a Natural Disaster."¹⁹ Limited official preparedness and response to the storm's devastation was alluded to as an "official incompetence"²⁰ with dire consequences, and prompted Congress to "overhaul" its emergency management framework, infrastructure, and systems.²¹ The human, social, and material losses were abysmal: more than a million people in the Gulf Coast were displaced and evacuated, many from their homes and communities.²² Despite this devastation, many returned home within days; but up to 600,000 households were still displaced a month afterwards.²³ New Orleans' population fell to an estimated 230,172 after Katrina by July 2006; there was a decrease of 254,502 people, over half of the city's pre-Katrina population.²⁴

Years after Hurricane Katrina overran New Orleans and the Gulf Coast region, its inhabitants and infrastructure continued to recover from a disaster that was as much human as natural.²⁵ Hurricane Katrina's devastating winds and torrential rains battered the Gulf in tragic proportions, leaving the region broken, with towns submerged in a brew of floodwater and despair.²⁶ Like in many disasters, the cost of hazards are often hidden and underestimated; the true cost of Katrina in New Orleans will never be known.²⁸ However, limited estimates illustrate the damage to infrastructure and environment, loss to the economy, and the cost of emergency and reconstruction assistance. To add, there was a lack of observations of social and environmental consequences.²⁹ Estimates derived from scattered data provide an approximated aggregate monetary loss of around \$40-\$50 billion just

in the Orleans Parish.³⁰ Needless to say, this was a humanitarian crisis.³¹

i. Demographics, Displacement, and Reconstruction Needs Post-Hurricane Katrina

The Gulf Coast suffered critical disruptions to the local economy, population, vulnerability, and labor markets. Damages from Katrina were not limited to local infrastructure—including homes, business structures, and other business capital—for damages extended to the population—more specifically, the workforce. Recovery and reconstruction needs represented a challenge for reconstruction and an opportunity for solutions beyond what was readily available.

Hurricane Katrina's displacement and massive evacuation meant a complex and lengthy recovery, looking for means to fill labor shortages for urgent and critical work. Federal emergency procurement and assistance for storm relief and recovery was made available at the time, which enabled companies and contractors to engage in reconstruction work—which required facilitating employment opportunities for people across the Gulf Coast. Considerable reconstruction needs due to the Hurricane's devastation meant procuring a significant labor force for cleanup and rebuilding.³² With significant numbers of Gulf Coast residents displaced and a crumbling and hazardous infrastructure, there was a critical and urgent need for repair and recovery. But, who was available to rebuild?

According to the Current Population Survey ("CPS") at the time,³³ 84 percent of evacuees returned to their home state within one year after Katrina—although not always to their original location. Returnees likely faced lower unemployment rates due to socioeconomic characteristics associated with above average labor force participation compared to other groups of evacuees that did not return. With high numbers of evacuees and displaced people, the returnee population was likely to experience unfavorable labor market outcomes, like being out of the labor force altogether, or unemployment. It was reasonable to expect that returnees would do better, either because their economic losses may have been smaller, or because they had larger support networks

that allowed them to return³⁴ in comparison to someone outside of that group with limited incentives; but the human and social needs only increased.

The post-Hurricane population recovery looked grim; economic and employment recovery showed signs of distress. Disaster reconstruction required time, funding, and arduous allocation of resources. Post-crisis interventions in the Gulf region required the following: (1) immediate emergency response (including relief and cleanup), (2) subsequent restoration, and (3) reconstruction. A lot of the initial lift involved executing a search and rescue, establishing emergency shelters, establishing order, clearing major city arteries, and draining floodwaters. Victims of Katrina endured periods of catastrophe throughout these stages. Important needs remained throughout, and reconstruction did not begin until the end of the restoration of infrastructure, housing, and jobs for the destroyed city and pre-disaster population.³⁵

ii. Reconstruction and Demographic Circumstances

The region was left with a hefty list of reconstruction needs and wants. So, how did authorities tackle some of these challenges? Throughout history, natural disasters and the construction industry trigger a rise in increased dependence on illegal and/or migrant workers.³⁶ For example, by 1890 "90 percent of New York City's public works employees, and 99 percent of Chicago's street workers, were Italian [immigrants]."³⁷ Then, from 1990 to 2004, the percentage of local construction workers who were Mexican immigrants jumped from 3.3 percent to 17 percent, signaling a rising trend.³⁹ Moreover, federally funded projects are no strangers to tapping immigrant workforce due to shortage of local workers; examples include the transcontinental railroad and the Erie Canal.⁴⁰ By 2000, most of the construction on the railroads in Arizona, Nevada, New Mexico, and Southern California was completed by Mexican laborers. These workers were critical in transforming the Southwest into the fertile region that it is today.⁴²

As evidenced, the construction industry has historically depended on affordable and migrant labor. Further, US history has shown migrant workers' long-standing involvement in the construction and agriculture industries, proving evident that immigrant

labor is here to stay. Post-Hurricane Katrina, storm victims that lost local jobs could have supplied the workforce demand; but that was not the case. Evidence shows that the return dynamics were extremely complex. Recovery and reconstruction needs served as pull factors for immigrants looking for work. Furthermore, the federal government's approach to help address these critical gaps in the workforce bolstered the influx of migrants into the region.⁴³

The Gulf Coast faced challenges in population stabilization and recovery. The federal government intervened to bolster disaster recovery and enhance workforce availability for reconstruction. Widespread damage and destruction left people without belongings, and government facilities were unable to operate as usual. Victims were left without identification documents—either because of the evacuation from their homes, or the loss or damage of personal items and records—putting them in a cycle of ongoing displacement, living in shelters and temporary housing. Lack of adequate personal identification documentation represented a problem for all victims. But, this was a particularly acute issue for employment and immigration, given the specific consequences under immigration law related to employment eligibility.

iii. Government Intervention Invoked Migration Solutions

Imagination is not usually associated with bureaucracies and governmental behavior.⁴⁴ Before Hurricane Katrina, the people identified as Hispanics in Louisiana made up approximately 2-3 percent of the population,⁴⁵ 1.4 percent in Mississippi, and 1.7 percent in Alabama.⁴⁶ The primary draws for employment to the southeastern US before the Hurricane were agriculture, meatpacking, carpet, garment, and textile production, and the onshore oil industry.⁴⁷ It was a small proportion compared to the rest of the residents at the time. That quickly changed with Hurricane Katrina.

The immigrant Hispanic population present in the Gulf Coast and neighboring communities reached the Gulf Coast for reconstruction work. The Hispanic immigrant community, sizable and undocumented, was able to do this because federal

government policy decisions and subsequent actions served as pull factors⁴⁸ and allowed contractors to include and establish reconstruction teams with reduced legal barriers. Further, after Hurricane Katrina swept the region, the Department of Homeland Security ("DHS") encouraged unauthorized immigrants affected by the Hurricane to come forward and seek assistance⁴⁹ to reduce the harm endured by that segment of the already vulnerable population.

Additionally, the precarity of the situation and resources immediately available for reconstruction prompted the administration to suspend the Davis-Bacon Act, eliminating the requirement that federal construction contractors pay locally prevailing wages to all employees on projects more than \$2,000. This suspension enabled workforce availability and federal procurement for reconstruction in the Gulf Coast, thereby easing transactions and procurement of local goods and services towards the reconstruction and recovery efforts by enabling new labor market dynamics—especially for migrant workers accustomed to lower wages than the newly reduced wage.⁵⁰ Moreover, soon after, DHS announced it would not sanction employers for hiring Hurricane victims that were unable to provide documentation required under the Immigration and Nationality Act.⁵¹ This decision was intended to allow hiring and work for victims that lost their belongings, including documentation required for employment under federal law. In particular, it was intended to enable quicker and unburdened "bootstrapping" of reconstruction and work anticipated through procurement by federal assistance.

By removing this burden through discretionary enforcement, the government facilitated the employment of Hurricane victims, many who lost the documents needed to prove they were eligible to work. However, the unintended consequence of refraining from enforcing federal wage and immigration law came with unanticipated (or anticipated) on domestic and, even hemispheric, immigration. Within a few weeks after Katrina hit, migrants across and outside the US responded to advertisements soliciting workers for the cleanup and reconstruction of the Hurricane-ravaged Gulf Coast.⁵²

After the city emptied and the government announced these measures for reconstruction, Latinos moved in to rebuild.⁵³ They came from Nashville, Houston, Atlanta, South Florida, Puerto Rico, Honduras, Guatemala, and Brazil. The population of New Orleans was about 20 percent down from what it was before the Hurricane, but the Latino population skyrocketed. Census figures show that 33,000 Hispanics moved into that area since the Hurricane—a 57 percent increase through 2012.⁵⁴ This was much higher than the national average age, almost certainly, a significant undercount, because of undocumented immigrants who may have failed to be captured by Census data.⁵⁵

The announcement by DHS to waive the documentation provisions attracted undocumented migrants to the Gulf Coast area in search of work.⁵⁶ Many migrant workers jumped at the opportunity the Gulf Coast presented to laborers. Lured by promises of long hours and good wages, thousands of workers left their families and homes to work in New Orleans.⁵⁷ The federal government's suspension of two major hurdles preventing the hiring of illegal migrant workers ultimately had an impact on the influx of migrant and undocumented workers. Authorities took no additional measures to increase protection for a predictable influx of vulnerable laborers seeking jobs (including undocumented workers)—a foreseeable consequence of this measure.⁵⁸ Despite the many problems facing migrant workers in the Gulf region, the numbers continued to increase.⁵⁹

If local displaced resident could not return, or returned but had to focus on rebuilding their lives, who would be positioned to aid and lead the reconstruction of the region? Recovery and reconstruction demanded manpower and resources for hazardous and complex cleanup, while gaps in population and resources presented a restricted scenario for official reconstruction intervention.

During the recovery period, several accounts from migrant workers in the Gulf Coast described the city as a bombed-out shell struggling to rebuild. By mid-2006, less than a year after Hurricane Katrina, entire neighborhoods remained abandoned with houses overrun by mold and debris.⁶⁰ Many immigrants that moved to New Orleans in search of

construction work reported that finding jobs was easy but finding a habitable place to live was another matter.⁶¹ Furthermore, the federal government attempted to address labor needs for recovery and reconstruction from different policy perspectives, in order to help fill gaps in the local workforce and assist and reduce the losses from Katrina and its aftermath. This included initiatives to mobilize and engage the available migrant population that was ready to fill gaps in reconstruction needs.

Deliberate and discretionary government action, evidenced by exemplary and efficient government behavior, incorporated elements beyond immediate concerns such as emergency relief, like immigration considerations. Migrant labor served a unique purpose. It was an undeniable requisite for recovery only made possible by federal government intervention. The measures attempted to protect everyone affected—regardless of their immigration status—while finding a way to allow employment of those directly and materially affected due to the events involving Hurricane Katrina, such as those who were evacuated from their homes, suffered loss or damage to personal items and records, and living in ongoing displacement at shelters and temporary housing. At the time, US employers were responsible for completing and retaining employment eligibility verification.

Post-Hurricane Katrina research found that nearly half of the reconstruction workforce in New Orleans was Latino, of which 54 percent was undocumented.⁶² Most of these workers arrived since the storm and performed tasks critical to rebuilding New Orleans and neighboring communities. It is important to acknowledge the specific government effort that attempted to devise an integrated approach to tailored humanitarian needs, considered important matters at the time, such as: displacement of residents and communities, workforce needs for cleanup, and relief and reconstruction of the devastation. After all, this was the federal government's policy decisions which can be construed as the opposite to a lack of imagination, or maybe a lack of planning; nonetheless, they attempted to address a very specific issue. These decisions went beyond traditional government behavior and immigration policy, and resulted in *ad hoc* innovations prompted through discretionary agency decisions that impacted and influenced the

local immigration landscape and recovery efforts.

II. SPECIAL AND EMERGENCY CIRCUMSTANCES DECLARATIONS TO INNOVATE IN GOVERNMENT POWERS AND DISCRETION FOR HUMANITARIAN CHALLENGES

Historical and contemporary practice of federal government discretion has provided proof of concept and precedent of the executive government's discretionary exercise of immigration enforcement authority, with proper justification, in humanitarian scenarios and circumstances. Through existing rules, governments can adopt mechanisms to address new crises or circumstances not originally contemplated within a particular framework, meaning there is no need to develop new rules or laws to seek solutions for different crises. Can different levels of government adopt similar approaches to specific humanitarian crises like the "Southern border"?⁶³

The situation at the southern border, and subsequent immigration issues created throughout US cities, is increasingly referred to and classified as a "crisis," or a scenario requiring urgent attention that addresses structural circumstances through courses of action to avert the vulnerability or endangerment of people and communities. Because the threat of vulnerability is structural, it is assumed that the current *status quo* cannot sufficiently deal with the threat.⁶⁴ For example, the state of Texas issued and renewed their emergency declaration on the southern border crisis.⁶⁵ Why can't other states or locales adopt similar stances and take on proactive approaches to tackle issues of migration? Can special circumstances allow governments at different levels to access solutions and innovations for their communities?

By examining components of the current crisis attributed to the situation at the southern border, accounts and reports illustrate that many who crossed the southern border and await their immigration decision require some sort of temporary measures for relief.⁶⁷ In doing so, may such a response avoid aggravating migrants' vulnerability and likely avert endangering them further by contributing to their stabilization and adjustment of immigration status? For example, asylum seekers are eligible for employment authorization;⁶⁸ currently, however, the adjudicative decisions are taking longer than anticipated.⁶⁹

Could governments at the local, state, or federal level declare a crisis (where applicable), allocate resources, and use rules that grant them flexibility to respond to the crisis? Yes, they can, and for the most part, they do. But could they go further by devoting similar temporary measures in locations where there is a specific need for labor (in this case, migrants), especially when many individuals are already in the US asylum system (meaning they are likely eligible)? Is there a crisis in the immigration system? Is there a crisis in host communities? Are migrants pending immigration adjudication enduring hardships? These are all questions that require answers in order to understand whether there is an ongoing crisis.

Can the federal government collaborate with state or local governments, either through "agency discretion," special or emergency declarations, or variations thereof, empowering the President to issue declarations in response to requests from state or local officials, allowing for the allocation of assistance and resources when an incident becomes overwhelming, including refraining from enforcement or adjusting the interpretation of certain rules? Or is executive action likely to overwhelm state and local resources—something inspired or compatible to the Robert T. Stafford Disaster Relief and Emergency Assistance Act? This, and other variations of policymaking and interpretation, can incorporate similar justifications used for the DACA program or TPS, where federal assistance is needed to supplement state and local efforts, thereby increasing state or local governments' capacity to save lives, protect property, avoid public health and safety crises, or lessen or avert the threat of endangerment or a similar event. Would similar crisis-driven circumstances be susceptible to government intervention through discretion enabled by law? Could other types of migrants be considered under special circumstances to fill market or workforce gaps in times of need? This approach is interesting because, in comparable current situations, heightened demands for immigration status often lead to increased requests for work authorization. In places where migrants to the US have pending claims, they seek work permits to sustain themselves while awaiting adjudication. As things are, the above scenarios are plausible and contribute to the contemporary dynamism and increasingly tiered nature of the immigration system in the US (and possibly other nations and jurisdictions that adopt similar stances and strategies around the world).

In addition to domestic tools, international norms recognize rights and protections for migrants by virtue of demographic minority, language, and immigration status. Does this then constitute a particular vulnerable group under international human rights standards which must therefore be afforded appropriate protections in concordance with domestic laws? Maybe. International instruments compel public authorities to adopt measures to protect individuals from violations of human rights and access to remedies.

However, the rise in migration dynamisms implicates and increasing aversion to international law and norms. Nonetheless, something important to consider, given that international law is one of the largest precursors of migration frameworks and rules to promote humane migration and migrant's rights and protection, is determining how to balance competing stances where domestic laws increasingly compete with frameworks developed and adopted to protect migrants. In Louisiana, a Senate bill was introduced (and passed) to end state and local cooperation with rules and mandates imposed by international organizations, including the United Nations.⁷⁰ Not only does it assert this staunch stance in contravention to international norms, but the bill also provides practical steps to limit the impact in the state by barring state and local cooperation with international rules, regulations, and mandates.

III. CONCLUSION: THE IMPERATIVE OF LEGAL INNOVATION IN IMMIGRATION SOLUTIONS

It is common to encounter a risk-averse, culture-permeating government, but it is imperative to recognize the need to respond and reflect with agility to contemporary challenges and issues. One-size-fits-all plans are increasingly proven to be limited in options. In the case of Hurricane Katrina, despite being classified as a category 5, it required a category 1 response, which included authorities and officials thinking about reconstruction and post-disaster needs. There is a lot to be done in this field, and adopting discretionary measures for immigration and related rules at different levels allows governments to collaborate with local authorities, communities, and stakeholders to identify different forms of community, migrant stabilization, and integration that can ultimately represent avenues to

seek transition measures for migrants in need.

The consequences of special circumstances, such as Hurricane Katrina in the Gulf Coast or the events in New York during 9/11, had very specific implications for foreign nationals who lived in the region. Regardless of the immigration status of a foreign national, significant factors and issues came into consideration regarding how federal laws and policies are applied in these circumstances. As this analysis concludes, it is important to highlight the House of Representatives' Select Bipartisan Committee ("the Committee") charged with conducting a full investigation regarding the preparation for, and response to, Hurricane Katrina.⁷² The final report, released on February 15, 2006, concluded with the effects of government failure, reasons for devastations, and the difficulty in understanding how the government response was ineffective to an anticipated disaster.⁷³ Specific warnings had been issued for days; moreover, this was a crisis that was not only *predictable*, but it was also *predicted*.⁷⁴ Governmental failure was manifested in infrastructure, neglect, and institutional incompetence. Amidst the chaos and destruction in a post-Katrina recovery, the failure in leadership, coordination, and preparedness at every level of government were identified as critical drivers of it all.⁷⁵ The Report's analysis noted that Katrina was a failure of a series of circumstances, which involved lack of imagination an initiative; this derived from a failure in leadership where there was good information, a coordinated process for sharing it, and a willingness to use it—however imperfect or incomplete—to fuel action.⁷⁶

Leadership and imagination have not only been cited as drivers for failures in government responses in the US; a few years before Hurricane Katrina, Congress created the National Commission on Terrorist Attacks Upon the United States (known as "the 9/11 Commission").⁷⁷ The Commission explicitly addressed an immediate preparedness and response to the attacks.⁷⁸ The Commission's public report noted that the 9/11 attacks revealed four kinds of failures: imagination, policy, capabilities, and management.⁷⁹ It further alleged failure to institutionalize imagination in creating a method for detecting and acting with the right leadership that could have anticipated and deployed responses to multiple scenarios. Additionally, the official findings

highlight the failure of initiative was a result of failing to act quickly.

Despite attributed failures and challenges at the time during these two important historical events, there was agility in devising solutions for measures that provided flexibility and adaptability of immigration enforcement features towards recovery of the Gulf Coast region and victims of terrorist attacks. Amid record arrivals at the US-Mexico border, US immigration policy is in a high degree of dynamism of humanitarian and legal immigration policies. Examples of innovative approaches within US federal immigration enforcement demonstrate instances where the executive branch has played an active role through legal innovations and challenges. These efforts have led to the discovery, testing, and sometimes cessation of immigration solutions. Concurrently, states, cities, and towns have assumed increasingly significant roles in immigration activism and response to needs, particularly as hemispheric migration shapes and impacts local communities in diverse ways.

States and local governments can consider regulating or collaborating in dynamic solutions for other forms of labor or relief for migrants that do not constitute employment under federal law. Congress enacted the Fair Labor Standards Act ("FLSA") to eliminate "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers."⁸⁰ In general terms, the FLSA requires covered employers to pay employees at least the federal minimum wage. It also requires covered employers to maintain certain records regarding employees and prohibits retaliation against employees who are discharged or discriminated against after, for example, filing a complaint regarding pay discrepancies. However, FLSA's protections do not apply to independent contractors; contractors have no formal employer-employee relationship and, in most instances, are exempted from the protection of traditional employment rules. Yet, some states support and regulate forms of independent contractors, where there is no prohibition on the type of work of employer. States and local authorities in the face of special circumstances can identify means to support or regulate certain types of work or labor. Local governments can lawfully get people to work without enforcing (or breaking) federal laws. While the

legality of this is not debated in this article, it is presented rather as additional legal adaptations and interpretations subject to discussion and analysis that can offer migration solutions—not only in the US, but other jurisdictions around the world.

But, where is this headed? How can the administration execute measures that contribute to alleviate tensions at the border and beyond? Can long-standing executive dominance on immigration continue as a form for legal migration innovations and solutions? And, do official findings by the Committee and 9/11 Commission indicate that, with the right leadership, it is possible to institutionalize imagination to detect and act promptly, by anticipating and deploying responses creatively in multiple scenarios with feasible solutions in the immigration field?

ENDNOTES

¹ Several ideas and arguments discussed in this article were presented by Michael J. Wishnie, William O. Douglas Clinical Professor of Law, Yale Law School, prompted and inspired during the panel discussion at the 20th Annual Immigration Law and Policy Conference in Washington DC.

² *Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States*, USCIS, https://www.uscis.gov/humanitarian/humanitarian_parole (last updated Oct. 23, 2023).

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