NOTES & COMMENTS

CATCHING THE FORGOTTEN: REPAIRING THE SAFETY NET FOR COFA MIGRANTS IN THE UNITED STATES

by
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Citizens of the Freely Associated States—the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Belau—are permitted to live and work in the United States without a visa under the Compacts of Free Association (COFA). Yet, for nearly three decades, COFA migrants were excluded from the federal public benefits safety net. This exclusion, a product of legislative oversight in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, devastated communities like the Marshallese in Springdale, Arkansas, who endured dangerous working conditions, poverty, and severe health vulnerabilities without access to critical federal benefits programs. While the COFA renewal in 2024 restored federal benefits eligibility, this Note argues that restored eligibility alone is insufficient, and recommends expanded language access resources and increased legislative awareness of COFA migrants to ensure the safety net does not fail them again.

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INTRODUCTION

"Jeblaak in wa enāj bar jeḷaak, jeblaak in armej eban bar jeḷaak"
[The ship that leaves will return, but the person who leaves (dies) will never return]
—Marshallese proverb[1]

On March 1, 1954, the children of the island of Rongelap, Marshall Islands, were delighted when snow began to fall on their village. It was an odd occurrence—the Marshall Islands are located only about 500 miles north of the equator, and snow had likely never fallen on the chain of atolls in the thousands of years that the Marshallese had lived there.[2] But the day had been one of strange occurrences: that

[1] *Concordance of the Example Sentences*, MARSHALLESE–ENG. ONLINE DICTIONARY, https://ling.lll.hawaii.edu/dicts/MOD/concfiles/coneng-return.htm [https://perma.cc/VW4L-P3R8] (last visited Feb. 14, 2026).

[2] *See* Jessica A. Schwartz, *A "Voice to Sing": Rongelapese Musical Activism and the Production of Nuclear Knowledge*, MUSIC & POL., Winter 2012, at 1, 6; *see also* WORLD BANK GRP., *Marshall Islands: Climatology (CRU)*, CLIMATE CHANGE KNOWLEDGE PORTAL, https://climateknowledgeportal.worldbank.org/country/marshall-islands/climate-data-historical

same morning, a brilliant, colorful light as luminous as the sun appeared in the west, followed by smoke that covered the whole sky.[3] A strong, warm wind, like that of a typhoon, rushed across the island soon after, followed by the sound of a great explosion.[4]

At first, the younger children played with the strange white substance, which began to fall around noon.[5] By the time night fell, the islanders' feet burned as though they had dipped them in boiling water, and their skin itched so badly that they could not fall asleep.[6] In the days that followed, they began to lose their fingernails and hair.[7]

The white substance that blanketed the island was not snow. At 6:45 AM that day, the United States detonated a hydrogen bomb with the destructive power equivalent to 15 million tons of TNT on Bikini Atoll,[8] a mere 200 kilometers (125 miles) from the island of Rongelap.[9] Codenamed "Castle Bravo," the test created a fireball nearly three miles in diameter that rose 45,000 feet into the sky.[10] If a similar bomb had been dropped on Washington, D.C., 90% of the populations of Washington, Baltimore, Philadelphia, and New York would have died in three days.[11] Pulverized coral and ash from the mile-wide crater created by the blast were sucked into a towering cloud and carried by the wind to Rongelap where it fell upon the inhabitants.[12] It is estimated that the people of Rongelap were exposed to

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[https://perma.cc/3WMW-9ZQ8] (last visited Jan. 2, 2026) (documenting the annual average minimum air temperature in the Marshall Islands over the last 100 years as never dropping below 27 degrees Celsius); *Marshall Islands: Manhattan Project National Historical Park*, U.S. NAT'L PARK SERV. (Sep. 13, 2024), https://www.nps.gov/articles/000/marshall-islands.htm [https://perma.cc/JCL5-XV5U] (reporting that the atolls of the Marshall Islands "have been inhabited by humans for thousands of years").

[3] JANE DIBBLIN, DAY OF TWO SUNS: US NUCLEAR TESTING AND THE PACIFIC ISLANDERS 25 (1990).

[4] *Id.*

[5] *Id.* at 24.

[6] *Id.* at 26–27; *see also* Schwartz, *supra* note 2, at 6 (discussing how "[m]en, women, and children became violently ill and ran into the lagoon for respite" after playing in the "snow").

[7] DIBBLIN, *supra* note 3, at 26–27.

[8] EDWIN J. MARTIN & RICHARD H. ROWLAND, DEF. NUCLEAR AGENCY, DEP'T OF DEF., DNA 6035F, CASTLE SERIES: 1954, at 3, 205 (1982).

[9] COMM. ON RADIOLOGICAL SAFETY IN THE MARSH. IS., NAT'L RSCH. COUNCIL, RADIOLOGICAL ASSESSMENTS FOR RESETTLEMENT OF RONGELAP IN THE REPUBLIC OF THE MARSHALL ISLANDS 13 (1994).

[10] MARTIN & ROWLAND, *supra* note 8, at 205.

[11] DANIEL IMMERWAHR, HOW TO HIDE AN EMPIRE: A HISTORY OF THE GREATER UNITED STATES 350 (2019).

[12] MARTIN & ROWLAND, *supra* note 8, at 205; DIBBLIN, *supra* note 3, at 25; IMMERWAHR, *supra* note 11, at 350.

175 rem of radiation that day, 1,750 times the recommended dose limit for individual members of the public per year.[13]

The Marshall Islands were chosen as the "proving ground" for these destructive tests because of their remoteness from the mainland and low population.[14] In the wake of the bombings of Hiroshima and Nagasaki, and previous testing in New Mexico, the United States was surely aware of the devastation that even stronger nuclear weapons of mass destruction could bring.[15] Autumn Bordner, a former researcher at Columbia University's K=1 Project, which focused on nuclear testing in the Marshall Islands, notes, "colonial narratives portray[] the islands as small, remote and unimportant."[16] The reasoning behind the United States' ultimate choice to detonate 66 nuclear weapons in the Marshall Islands from 1946 to 1958[17] is best articulated in the words of Henry Kissinger, who, when asked about the implications of nuclear testing in Micronesia, apparently responded: "There are only 90,000 people out there. . . . Who gives a damn?"[18] The people of Bikini Atoll, who had to leave their homes, never to return, would have given a damn. The people of

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[13] DIBBLIN, *supra* note 3, at 25; *see* 10 C.F.R. § 20.1301(a) (2025) ("Each licensee shall conduct operations so that (1) The total effective dose equivalent to individual members of the public from the licensed operation does not exceed 0.1 rem (1 mSv) in a year.").

[14] JON MITCHELL, POISONING THE PACIFIC: THE US MILITARY'S SECRET DUMPING OF PLUTONIUM, CHEMICAL WEAPONS, AND AGENT ORANGE 41 (2020); *see also* Zohl dé Ishtar, *Poisoned Lives, Contaminated Lands: Marshall Islanders Are Paying a High Price for the United States Nuclear Arsenal*, 2 SEATTLE J. FOR SOC. JUST. 287, 288 (2003) (noting that the United States. selected the Marshall Islands for testing because their isolation concealed militarization from global scrutiny).

[15] *See* Lisbeth Gronlund, *Physicists Built the Bomb, Urged Restraint Too*, ARMS CONTROL ASS'N (Sep. 2023), https://www.armscontrol.org/act/2023-09/features/physicists-built-bomb-urged-restraint-too [https://perma.cc/GD43-XA2A]; Becky Little, *The Atomic Bomb's First Victims Were in New Mexico*, HISTORY (May 27, 2025), https://www.history.com/articles/atomic-bomb-test-victims-new-mexico-downwinders [https://perma.cc/J7FQ-9DBF] (discussing the "Trinity test" conducted by Manhattan Project scientists in New Mexico in July 1945 and criticizing the U.S. government's efforts to sweep the fallout under the rug).

[16] Susanne Rust, *How the U.S. Betrayed the Marshall Islands, Kindling the Next Nuclear Disaster*, L.A. TIMES (Nov. 10, 2019), https://www.latimes.com/projects/marshall-islands-nuclear-testing-sea-level-rise/ [https://perma.cc/YBG8-3389]; *K=1 Project: Mission*, COLUMBIA UNIV.: CTR. FOR NUCLEAR STUD., https://k1project.columbia.edu/about/mission [https://perma.cc/4RQB-78NB] (last visited Feb. 15, 2026) (describing the K=1 Project as an educational initiative at Columbia University's Center for Nuclear Studies, focused on preparing students and the public to engage with nuclear weapons and energy policy issues).

[17] dé Ishtar, *supra* note 14, at 288.

[18] IMMERWAHR, *supra* note 11, at 350; MITCHELL, *supra* note 14, at 41. Kissinger subsequently denied saying this. Roy Smith, *These Pacific Islanders Still Live at the Mercy of the US Military*, THE CONVERSATION (June 19, 2015, at 01:06 EDT), https://theconversation.com/these-pacific-islanders-still-live-at-the-mercy-of-the-us-military-43288 [https://perma.cc/S82N-6HCY].

Rongelap, who watched their children writhe in pain in the hours after Castle Bravo, would have given a damn. The United States should have given a damn then. Now, 70 years later, we should *still* give a damn.

Unfortunately, the United States' pattern of selective amnesia of Micronesian communities continues to this day, even for those who are lawfully residing within the mainland. The United States' colonial history and current scheme in Micronesia have caused complicated and harmful effects to islands in the region: the unincorporated territory of Guåhan (Guam), the Commonwealth of the Northern Mariana Islands (comprised of 14 islands, including Saipan, Tinian, and Luta), the Federated States of Micronesia (Yap, Chuuk, Pohnpei, and Kosrae), the Republic of Belau (Palau), and the Republic of the Marshall Islands.[19] While the Federated States of Micronesia, the Republic of Belau, and the Republic of the Marshall Islands have gained independence and are recognized as sovereign nations, they remain tied to the United States under the Compacts of Free Association (COFA).[20] These three nations are called the Freely Associated States (FAS) because, per the COFA, in exchange for the exclusive, strategic access to their islands for military buildup, the United States agreed to defend the FAS from external threats, provide economic assistance, and grant citizens of these nations the right to freely migrate to the United States and live and work there without a visa.[21] A majority of people in the United States have likely never heard of the COFA, or are unaware of the history that brings COFA migrants to the mainland.[22] This lack of awareness has directly impacted the lives of COFA migrants since 1996, when they were omitted from vital legislation, rendering them ineligible for federal public benefits.[23]

Upwards of 94,000 COFA migrants and their families live and work in the

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[19] *See generally* John B. Metelski, *Micronesia and Free Association: Can Federalism Save Them?*, 5 CAL. W. INT'L L.J. 162 (1974) (tracing over four centuries of colonial control in Micronesia and describing how U.S. administration of the Trust Territory fostered economic dependency and political fragmentation through land acquisition, aid leverage, and uneven development); Ediberto Román & Theron Simmons, *Membership Denied: Subordination and Subjugation Under United States Expansionism*, 39 S.D. L. REV. 437 (2002) (outlining the history and effects of United States imperialist expansionism on its island territories).

[20] *See* 48 U.S.C. §§ 1901(a)–(b), 1932(a) (declaring that "[t]he Compact of Free Association set forth in title II of this joint resolution between the United States and the Government[s]" of the Federated States of Micronesia and the Marshall Islands was approved, in addition to further extending that Compact to include Palau); THOMAS LUM & JARED G. TUPUOLA, CONG. RSCH. SERV., R48311, THE FREELY ASSOCIATED STATES AND ISSUES FOR CONGRESS 1–3, 6 (2024).

[21] LUM & TUPUOLA, *supra* note 20, at 1–4, 6.

[22] dé Ishtar, *supra* note 14, at 288; *see, e.g.*, U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-491, COMPACTS OF FREE ASSOCIATION: POPULATIONS IN U.S. AREAS HAVE GROWN, WITH VARYING REPORTED EFFECTS app. VII at 82 (2020) (discussing how government officials and employers are unaware of COFA migrants and need further education on their migration status).

[23] Pearl Anna McElfish, Emily Hallgren & Seiji Yamada, *Effect of US Health Policies on Health Care Access for Marshallese Migrants*, 105 AM. J. PUB. HEALTH 637, 638–39 (2015).

United States and its territories, with about 50% of those migrants living on the United States mainland.[24] Many come to pursue better employment opportunities and health care.[25] These individuals pay taxes and contribute to the workforce; but for many years, COFA migrants who arrived in the United States were unable to access essential federal benefit programs that were designed to aid those in their exact situation due to language in welfare reform legislation that suddenly stripped them of eligibility. With the most recent renewal of the COFA in 2024, the United States has a second chance to catch those who have fallen through the safety net that was meant to catch them. We have another chance to give a damn. As a child of Micronesia, I hope we do.

This Note will explore the necessity of federal benefit programs for individuals from Micronesia who migrated to the United States under the COFA, with particular focus on migrants from the Republic of the Marshall Islands (RMI) who currently reside in the United States. Part I discusses the history of colonization in Micronesia and the RMI, and explores the foundation of the Marshallese experience in the United States today. Part II focuses on the eligibility of Marshallese migrants in the United States for federal public benefits up to 2024 and examines the living and working conditions of the Marshallese residents of Springdale, Arkansas. Part III discusses the changes brought with the renewal of the COFA between the Marshall Islands and the United States in 2024, and the challenges that remain for the Marshallese. It concludes by recommending (1) an increase in assistance resources—especially with regard to language barriers preventing access to health care—to better allow individuals to receive the benefits they are now qualified for; and (2) increased knowledge about COFA migrants, to prevent their inadvertent omission in future legislation. By increasing COFA migrants' ability to navigate and access programs they are rightfully qualified for, as well as raising awareness of the history and unique status of these individuals, the net woven with systematic forgetting of Micronesians who migrated to the United States under the COFA can be repaired, so that it may once again catch these individuals, helping them live healthier, safer lives in the United States.

I. COLONIZATION OF THE RMI

The United States' history and current involvement in Micronesia is far from altruistic—it is predicated on Micronesia's strategic value as a forward military foothold in the Indo-Pacific Region, and is maintained through planned economic reliance, to the continued detriment of those who reside there. Remoteness from the mainland, the small populations of the island communities, and lingering racist tropes about the value of the culture and people of these islands laid the groundwork

[24] U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 22, at 13–15.

[25] McElfish et al., *supra* note 23, at 638.

for the United States to permit the people of Micronesia to become collateral damage in the quest for military dominance in the Pacific. This Part outlines the pre-colonial and pre-World War II (WWII) colonization of the RMI, the establishment of the Trust Territory of the Pacific, and finally, the creation of the COFA, which brings many Marshallese migrants to the United States.

A. Pre-Colonial Period and Pre-WWII Colonization

Situated on the eastern-most side of Micronesia, the RMI is comprised of 29 atolls and about 1,225 islands in the Western Pacific, located roughly four hours east of Guåhan and five hours west of Hawai'i via airplane.[26] The total land area is only 181 sq. km; however, when including lagoon waters in the calculation, the total area increases to approximately 11,673 sq. km.[27] About 82,000 people reside in the RMI, with roughly 96% of the population comprised of individuals of Marshallese descent.[28]

Micronesia, including the RMI, has been subject to colonization by outside powers since the mid-16th century. Spain was the first to arrive in the RMI in the mid-1500s, and it claimed the islands, until Germany purchased them from Spain in 1885.[29] The islands were taken by the Empire of Japan in 1914, leading to the League of Nations officially mandating them to Japan in 1920.[30] Over the course of the battles in the Pacific theater of WWII, the United States seized control of the Micronesian islands from the Empire of Japan in 1944 and retained control of them until 1947.[31] While the devastation of war and the period of atrocities under the Japanese had finally ended, a new chapter of subjugation awaited the RMI under the Trust Territory of the Pacific Islands.

B. The Trust Territory of the Pacific Islands

The United States retained control of Micronesia after WWII by agreeing to the administration of the newly formed Trust Territory of the Pacific Islands (TTPI) created by the United Nations in 1947, under the United Nations Trusteeship

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[26] *Explore All Countries—Marshall Islands*, CIA: WORLD FACTBOOK (Dec. 30, 2025), https://www.cia.gov/the-world-factbook/countries/marshall-islands/ [https://perma.cc/LS7T-85YR]; *Marshall Islands: Manhattan Project National Historical Park*, *supra* note 2.

[27] *Explore All Countries*, *supra* note 26; *Marshall Islands: Manhattan Project National Historical Park*, *supra* note 2.

[28] *Explore All Countries*, *supra* note 26.

[29] DIBBLIN, *supra* note 3, at 10, 13.

[30] Mandate for the German Possessions in the Pacific Ocean Lying North of the Equator, arts. 1–2, Dec. 17, 1920 (mandating "all the former German islands situated in the Pacific Ocean and lying north of the Equator" to the Emperor of Japan).

[31] Charles Hirsch Peskin, *They Are Here Because We Were There: COFA Migrants in the United States*, 37 GEO. IMMIGR. L.J. 345, 349 (2023).

System.[32] This system applied to territories that were then held under mandates established by the League of Nations, territories that were "detached from enemy states" after WWII, or territories that were "voluntarily placed under the system by states responsible for their administration."[33] Under this system, territories were administered by United Nations Member States who executed a trusteeship agreement with the United Nations.[34] The objective of the Trusteeship System was to support the trust territories in advancing toward self-government and independence through support and promotion of economic, social, and educational advancement.[35] Under this system, 11 trusteeships were formed: Western Samoa (administered by New Zealand); Tanganyika (administered by the United Kingdom); Rwanda-Urundi (administered by Belgium); Cameroons under British administration; Cameroons under French administration; Togoland under British administration; Togoland under French administration; New Guinea (administered by Australia); Nauru (administered by Australia, New Zealand, and the United Kingdom); Italian Somaliland; and the aforementioned Trust Territory of the Pacific.[36] Though the Trusteeship System's purpose was to promote decolonization and advancement of the trustee territories toward independence,[37] the TTPI's unique designation as a "Strategic Trust Territory" speaks volumes about the United States' motivations to administer the TTPI.[38]

The United States' intention to administer the TTPI was geared primarily for its strategic aims, rather than advancing the interests of Micronesia. The United Nations resolution officially placed the Pacific Islands formerly controlled by Japan—including the Marshall Islands, the Caroline Islands, and the Mariana Islands—under the control of the United States.[39] In return, the United States

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[32] S.C. Res. 21, arts. 1–2 (Apr. 2, 1947); Román & Simmons, *supra* note 19, at 484.

[33] U.N. Charter art. 77, ¶ 1.

[34] U.N., Dag Hammarskjöld Lib., UN Trusteeship Council Documentation (May 21, 2025), https://research.un.org/en/docs/tc/territories [https://perma.cc/AZ4J-PVUZ] (explaining the U.N. trusteeship agreement process and providing the Trust Territory Agreements).

[35] U.N. Charter art. 76; *see also* S.C. Res. 21, *supra* note 32, art. 6, ¶¶ 1–4 (requiring the United States to promote self-government and give Trust Territory inhabitants progressively increasing participation in administration and governance).

[36] *See* U.N., Dag Hammarskjöld Lib., *supra* note 34.

[37] *See* U.N.: Dag Hammarskjöld Lib., UN Trusteeship Council Documentation: Introduction to Trusteeship Council (May 21, 2025), https://research.un.org/en/docs/tc/intro [https://perma.cc/B49T-2LH3].

[38] *See* K. MORRIS, M. BURKETT & B. WHEELER, THE MARSH. IS. CLIMATE & MIGRATION PROJECT, CLIMATE-INDUCED MIGRATION AND THE COMPACT OF FREE ASSOCIATION (COFA): LIMITATIONS AND OPPORTUNITIES FOR THE CITIZENS OF THE REPUBLIC OF THE MARSHALL ISLANDS 3 (2019), http://www.rmi-migration.com [https://perma.cc/49WD-WTNM] (explaining benefits the United States has enjoyed under this agreement).

[39] S.C. Res. 21, *supra* note 32, art. 1; Note, *Trusteeship of the Territory of the Pacific Islands*, 45 INT'L L. DOCUMENTS 146, 146 (1948).

gained the authority to establish naval, military, and air bases in the territory.[40] The designation of Micronesia as a Strategic Trust Territory—the only trusteeship of the 11 created after WWII of this kind—allowed the United States to administer the TTPI to protect its security interests.[41] This trusteeship differed from the other trusteeships because it was overseen by the United Nations Security Council—comprised of five permanent members (China, France, the United Kingdom, the Union of Soviet Socialist Republics (U.S.S.R.), and, unsurprisingly, the United States), and up to ten non-permanent members[42]—rather than the General Assembly, which included all members.[43] This prevented the input of many states that may have hindered the United States' actions during the trusteeship period.[44] Furthermore, the agreement allowed the United States the power to block any attempts by the United Nations to interfere with the strategic aims,[45] or even access the territory,[46] rendering "the Micronesian islands invisible to the international

[40] S.C. Res. 21, *supra* note 32, art. 5.

[41] *See* Peskin, *supra* note 31, at 349; *see also* Glenn Petersen, *Lessons Learned: The Micronesian Quest for Independence in the Context of American Imperial History*, 3 MICR. J. HUMANS. & SOC. SCIS. 45, 49 (2004) (explaining that the TTPI was the only strategic trust among 11 United Nation trusteeships, a status that allowed the United States to administer the territory for security purposes and subjected it to Security Council rather than Trusteeship Council oversight).

[42] Kimie Hara, *Micronesia and the Postwar Remaking of the Asia Pacific: "An American Lake,"* ASIA–PAC. J., Aug. 1, 2007, at 1, 2, 4–5, 9; U.N., S.C., Current Members: Permanent and Non-Permanent Members, https://main.un.org/securitycouncil/en/content/current-members [https://perma.cc/4GHE-M2GR] (last visited Feb. 16, 2026). At the time of the establishment of the TTPI, the non-permanent members were: Australia, Brazil, Egypt, Mexico, Netherlands, and Poland. *See* U.N., S.C., Countries Elected Members, https://main.un.org/securitycouncil/en/content/countries-elected-members [https://perma.cc/H6PS-96GG] (last visited Feb. 16, 2026).

[43] *See* U.N., Main Bodies, https://www.un.org/en/about-us/main-bodies [https://perma.cc/5JPT-SLNY] (last visited Feb. 16, 2026).

[44] Elisa Leclerc, *Nuclear Testing on the Trust Territory of the Pacific Islands: How the US Became an Imperial Power in the Region of Micronesia*, *in* THE UNITED NATIONS TRUSTEESHIP SYSTEM: LEGACIES, CONTINUITIES, AND CHANGE 132, 135 (Jan Lüdert, Maria Ketzmerick & Julius Heise eds., 2023).

[45] Memorandum from House Comm. Nat'l Res. Indo-Pac. Task Force Republican Staff, to House Comm. Nat'l Res. Republican Members 4, 7 (June 14, 2023) [hereinafter Indo-Pacific Task Force Memorandum], https://naturalresources.house.gov/uploadedfiles/hearing_memo_—_ip_tf_ov_hrg_06.14.23.pdf [https://perma.cc/9QCY-G7C4]; *see also* S.C. Res. 21, *supra* note 32, art. 15 ("The terms of the present agreement shall not be altered, amended or terminated without the consent of the administering authority.").

[46] Indo-Pacific Task Force Memorandum, *supra* note 45, at 4, 7. President Truman made this clear in his Executive Order agreeing to the trusteeship, writing:

> The Secretary of the Navy shall, subject to such policies as the President may from time to time prescribe, and, when appropriate, in collaboration with other departments or agencies of the Federal Government, carry out the obligations which the United States, as the administering authority of the trust territory, has assumed under the terms of the agreement

public."[47] Finally, the terms of the agreement to the TTPI contained no end date.[48] While the promise of the TTPI seemed beneficial to the trustee–islands, which would gain much-needed support in the wake of WWII, the reality of the agreement showed otherwise.

Designation of the TTPI as a Strategic Trust Territory had two primary rationales: Micronesia's demonstrated tactical advantage during WWII, and its "vital" importance to the United States' own security.[49] This vital importance to security included the RMI's role as the location for the United States' nuclear testing program, which created long-lasting effects on the health of the land and people of the RMI that still endure today.[50]

1. Nuclear Testing in the RMI During the TTPI

The trusteeship agreement between the United States and the United Nations specifically stated that, as the administering authority, the United States was obligated to "protect the health of the inhabitants" and "protect the inhabitants against the loss of their lands and resources."[51] In light of the nuclear testing done in the RMI, these obligations were not upheld.

Nuclear testing in the RMI began before the creation of the TTPI. In 1946, the United States started its tests with the "Able" and "Baker" bomb detonations in Bikini Atoll's land and water as a part of "Operation Crossroads."[52] The same year of the establishment of the TTPI, with its tight reins on United Nations' intervention, the United States began its "Pacific Proving Grounds" program in earnest.[53] From 1946 to 1958, the United States detonated 66 nuclear devices in the Marshall Islands, atomizing land that islanders called home for thousands of years off the face of the earth and poisoning the land, water, and people with radioactive waste.[54]

> and the Charter of the United Nations: *Provided, however,* that the authority granted to the United States under Article 13 of the agreement to close any areas for security reasons and to determine the extent to which Articles 87 and 88 of the Charter of the United Nations shall be applicable to such closed areas shall be exercised jointly by the Secretary of the Navy and the Secretary of State.

Exec. Order No. 9875, 12 Fed. Reg. 4837, 4837–38 (July 22, 1947).

[47] Leclerc, *supra* note 44, at 135.

[48] Kevin Morris, Comment, *Navigating the Compact of Free Association: Three Decades of Supervised Self-Governance*, 41 U. HAW. L. REV. 384, 387 (2019).

[49] Peskin, *supra* note 31, at 349 n.26 (quoting U.N., REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS: VOLUME IV, art. 82, ¶ 6, U.N. Sales No. 1955.V.2(VOL.IV) (1955)).

[50] MITCHELL, *supra* note 14, at 41, 48, 212.

[51] S.C. Res. 21, *supra* note 32, art. 6, ¶¶ 2–3.

[52] DIBBLIN, *supra* note 3, at 20, 22, 237; MARTIN & ROWLAND, *supra* note 8, at 51, 227.

[53] *See Pacific Proving Ground Information*, EECAP, https://eecap.org/pacific-proving-ground-information/ [https://perma.cc/L3VZ-5WXK] (last visited Feb. 16, 2026).

[54] dé Ishtar, *supra* note 14, at 288; MITCHELL, *supra* note 14, at 48.

After the Castle Bravo test, the health of the people in the surrounding islands declined due to exposure to the nuclear fallout.[55] When the United States realized that people were getting sick, it seized the opportunity to conduct testing on the Marshallese, rather than warn them of the dangers or provide any treatment.[56] The United States encouraged Bikinians to return to their homes, assuring them it was safe, and even conducted human experiments on 500 Marshallese after the Castle Bravo detonation, without their informed consent.[57] This program, called Project 4.1, subjected the Marshallese to experimental procedures, such as injections with radioactive isotopes and operations performed without consent.[58] Merrill Eisenbud, an official with the Atomic Energy Commission (AEC), recognized the inhumane nature of these tests, stating during the AEC Biology and Medicine committee meeting in January 1956 that "data of this type has never been available. While it is true that these people do not live . . . the way Westerners do, [as] civilized people, it is nevertheless also true that these people are more like us than the mice."[59] Although the United States detonated its last nuclear weapon in 1958, maladies continued to appear in islanders exposed to the fallout: still births and miscarriages at rates more than twice the rates of unexposed Marshallese, growth retardation in children born after the tests, and elevated rates of thyroid tumors and abnormalities.[60]

The nuclear testing obliterated the islands in the area, contaminating the land, sea, animals, and vegetation with radiation.[61] This upturned the traditional way of life for the Marshallese, especially with regard to their diet. The contamination disrupted the availability of traditional food sources for the Marshallese and led to reliance on outside food sources that would eventually affect their health.[62] In exchange for their nutrient-rich ancestral diet consisting of breadfruit, taro, pandanus, fish and other seafood, the Marshallese diet has become increasingly reliant on Western imports, primarily processed foods such as soft drinks and canned meats.[63] An estimated 80–90% of food in the Marshall Islands is now

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[55] *See* dé Ishtar, *supra* note 14, at 291.

[56] *See* MITCHELL, *supra* note 14, at 48–49.

[57] *See* McElfish et al., *supra* note 23, at 637–38; Camilla Pohle, *'Ashes of Death': The Marshall Islands is Still Seeking Justice for US Nuclear Tests*, DIPLOMAT (Mar. 1, 2024), https://thediplomat.com/2024/03/ashes-of-death-the-marshall-islands-is-still-seeking-justice-for-us-nuclear-tests/ [https://perma.cc/XRG2-6CLG]; MITCHELL, *supra* note 14, at 49.

[58] MITCHELL, *supra* note 14, at 49.

[59] U.S. ATOMIC ENERGY COMM'N, ADVISORY COMMITTEE ON BIOLOGY & MEDICINE MEETING 232 (1956) (statement of Merrill Eisenbud).

[60] dé Ishtar, *supra* note 14, at 291–92.

[61] MITCHELL, *supra* note 14, at 48.

[62] Merissa Daborn, *Blown to Hell: The Health Legacies of US Nuclear Testing in the Marshall Islands*, CONSTELLATIONS, Jan. 23, 2014, at 26, 32–33.

[63] *Id.*

imported.[64] With the change in diet, the health of the Marshallese has declined; rates of type 2 diabetes in the Marshallese population are now among the highest in the world.[65] The failure of the United States to protect the health and lands of the RMI, as obligated in their Trusteeship Agreement, set the stage for Marshallese citizens to migrate to the mainland, searching for new opportunities and better health care.[66]

2. Movement Toward Self-Determination

With the tide turning against the annexation of territories, and the United States being the last of the administrators under the Trusteeship System that had not ended its trusteeship, the United States needed to develop a way to maintain its forward position in the Pacific but still fulfill its obligations under the Trustee Agreement.[67] Although one of its obligations as administering authority of the TTPI was to "promote the economic advancement and self-sufficiency of the inhabitants," the United States realized that, without the mechanism to legally take control of the RMI under any agreement, its control had to be accomplished through economic dependency.[68] For "'[a]s long as Micronesia remain[ed] economically dependent on

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[64] Kathryn J. Pollard, Cory Davis, Brenda Davis, David Donohue, William Wong, Ali Saad, Gia Merio & Neha Pathak, *Health Disparities and Climate Change in the Marshall Islands*, 56 ANNALS MED., no. 1, 2024, at 1, 1.

[65] *Id.* at 2; Brenda C. Davis, Humaira Jamshed, Courtney M. Peterson, Joan Sabaté, Ralph D. Harris, Rohit Koratkar, Jamie W. Spence & John H. Kelly Jr., *An Intensive Lifestyle Intervention to Treat Type 2 Diabetes in the Republic of the Marshall Islands: Protocol for a Randomized Controlled Trial*, FRONTIERS IN NUTRITION, June 2019, at 49, 49.

[66] HAW. APPLESEED CTR. FOR LAW & ECON. JUST., BROKEN PROMISES, SHATTERED LIVES: THE CASE FOR JUSTICE FOR MICRONESIANS IN HAWAI'I 5 (2011) https://evols.library.manoa.hawaii.edu/bitstreams/0b17ce1f-e936-486e-b2df-6287e4d5a62d/download [https://perma.cc/G9EG-PTK8?type=image]; *see also* Daborn, *supra* note 62, at 27 (discussing the United States' obligations under the terms of the trusteeship, including "the requirement to promote the health and well-being of the citizens of the Marshall Islands and to protect the inhabitants against the loss of their lands and resources").

[67] *See* Leclerc, *supra* note 44, at 135; ERIN THOMAS & SHANNON MARCOUX, INT'L CTR. FOR ADVOCS. AGAINST DISCRIMINATION, COMPACTS OF FREE ASSOCIATION (COFA): BALANCING THE SCALES IN NEGOTIATIONS BETWEEN THE UNITED STATES AND THE FEDERATED STATES OF MICRONESIA (FSM) AND THE REPUBLIC OF THE MARSHALL ISLANDS (RMI) 10–11 (2020), https://icaad.ngo/wp-content/uploads/2020/10/COFA-Strategic-Assessment-compressed.pdf [https://perma.cc/K832-QZVR]; *see also* U.N., U.N. & Decolonization, International Trusteeship System, https://www.un.org/dppa/decolonization/en/history/international-trusteeship-system-and-trust-territories [https://perma.cc/T44U-VKS7] (last visited Feb. 16, 2026) (providing an interactive timeline which shows both the establishment and dissolution of each trusteeship; as of September 1975, with the establishment of the independent State of Papau New Guinea, the United States was left as the sole remaining administrator).

[68] S.C. Res. 21, *supra* note 32, art. 6, ¶ 2; *see* THOMAS & MARCOUX, *supra* note 67, at 17 (explaining that "[e]conomic dependency on the U.S. was the central strategy to ensure the longevity of U.S. military access to the region"); Leclerc, *supra* note 44, at 135, 146 (discussing

the United States, the United States laws and policies [would] be influential.'"[69] In a 1963 report created by the Kennedy Administration regarding financial aid to Micronesia, the Chairman of the survey team, Anthony M. Solomon, recommended that "'by increasing United States financial aid, loyalty of the Trust Territory will be assured via the resultant economic dependency.'"[70] The former trust territories were ostensibly granted self-governance such that the United Nations declared the TTPI to be completed.[71] The subsequent COFA agreement between the United States and the RMI shows the fruition of Solomon's recommendation: the United States' unfettered military control of the Pacific, maintained by the economic reliance it had put in place.

C. The Compact of Free Association

After 17 years of negotiations, the COFA between the RMI and the United States went into force in 1986.[72] Patterned after similar agreements that New Zealand established between the Cook Islands and Niue, the agreements were "an opportunity for the U.S. to maintain strategic influence in the region while supporting, in theory, the self-determination and economic self-sufficiency" of the FAS.[73] In return for the legal right to freely live and work in the United States, military protection, and economic support[74] the United States would maintain exclusive rights to militarization of the FAS, including the right to "strategic denial" of any third-party wishing military access to the nations.[75]

The key provisions of the COFA defined the government relations, economic relations, and security and defense relations between the United States and the RMI.[76] In terms of government relations, the COFA established the independence of the FAS to manage and engage in their foreign affairs.[77] Next, for economic relations, the United States initially agreed to provide unrestricted annual budgetary

how the Trusteeship System "allowed a form of territorial acquisition that did not appear as colonization").

[69] Román & Simmons, *supra* note 19, at 505 (quoting Metelski, *supra* note 19, at 182).

[70] *Id.* (quoting Metelski, *supra* note 19, at 165 n.17).

[71] THOMAS & MARCOUX, *supra* note 67, at 11 ("The free association agreements effectively ended the TTPI and granted independence to the island states.").

[72] MORRIS ET AL., *supra* note 38, at 3.

[73] THOMAS & MARCOUX, *supra* note 67, at 11.

[74] Compact of Free Association Act of 1985 (COFA), Pub. L. No. 99-239, 99 Stat. 1770 (codified as amended at 48 U.S.C. §§ 1901–12).

[75] Peskin, *supra* note 31, at 346–47.

[76] Erin Thomas, *Compacts of Free Association in FSM, RMI, and Palau: Implications for the 2023–2024 Renewal Negotiations*, INT'L CTR. FOR ADVOCS. AGAINST DISCRIMINATION, https://icaad.ngo/wp-content/uploads/2019/10/COFA-Policy-Brief-2019.pdf [https://perma.cc/XB8V-4BXC] (last visited Feb. 16, 2026).

[77] *Id.*

support—with 60% slotted for current operations, and the remaining 40% for capital improvement projects.[78] In addition to this budgetary support, annual payments were provided for energy, communication, education, health and medical programs.[79] Moreover, the COFA grants the United States "full authority and responsibility for security and defense matters in or relating to the Marshall Islands and the Federated States of Micronesia," allowing the United States not only to keep facilities it had developed to secure military dominance in the region, but expand them.[80] In addition to these key provisions, the United States granted $150 million for claims in connection with its nuclear testing in the RMI, along with an espousal clause that these funds were "just and adequate settlement" for all present and future claims against the United States.[81] Finally, the United States granted citizens of the FAS the right to freely live and work in the United States without a visa.[82]

The COFA was renewed in 2003 and 2024, and represents an ongoing relationship between the United States and the RMI.[83] The United States has continued interest in maintaining its military dominance in the Pacific.[84] While it has seen growth in its own economy over the years, the RMI's continued reliance on economic assistance from the United States will likely keep the relationship strong between them for the near future.[85] The COFA represents a unique relationship between the United States and the FAS, rooted in the geopolitical realities of the post-WWII trusteeship era. While the agreements provide for defense, economic assistance, and migration, the issue of federal public benefits for COFA migrants—meaning FAS citizens who migrated to the United States under the COFA—once they arrived on the mainland was never clearly articulated within the agreement.[86] The exclusion of COFA migrants from key federal benefits eligibility under the welfare reform enacted in 1996 created significant challenges to the safety and health of FAS citizens who are admitted to the United States through

[78] COFA § 211 (outlining the COFA's economic assistance structure, which provided declining annual grants over 15 years with mandatory allocation of at least 40% to capital accounts—defined as construction, major infrastructure repair, and private sector development projects—and the remainder to current accounts for recurring operational activities and infrastructure maintenance).

[79] *Id.* §§ 214–16.

[80] *Id.* § 311.

[81] *Id.* § 177.

[82] *Id.* § 141.

[83] THOMAS LUM, CONG. RSCH. SERV., R48311, THE FREELY ASSOCIATED STATES AND ISSUES FOR CONGRESS 2 (2024).

[84] *See* Indo-Pacific Task Force Memorandum, *supra* note 45, at 7–8.

[85] *See* ASIAN DEV. BANK, ECONOMIC IMPACT OF THE COMPACT AND RENEWAL FOR THE REPUBLIC OF THE MARSHALL ISLANDS, at xi–xii (2023).

[86] *See* MORRIS ET AL., *supra* note 38, at 3–4.

the COFA.[87] Despite efforts to address these issues through amendments to the COFA, the debate reflecting broader questions about fairness, equality, and both the legal and moral responsibilities of the United States under the COFA continues.

II. MARSHALLESE IN THE UNITED STATES UNDER THE COFA

Almost one-third of the population of the RMI has migrated to the United States under the COFA, citing better access to economic and employment opportunities, education, and healthcare.[88] As this Part will outline, originally, individuals who were admitted to the United States under the COFA could avail of most federal benefit programs. This changed dramatically in 1996, when President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which effectively excluded COFA migrants from eligibility for almost all major social safety net programs. The unique immigration status of Marshallese, Belauans, and FSM citizens who came to the United States for better opportunities prevented them from receiving benefits afforded to similarly situated individuals from other nations, such as certain immigrants and refugees. Access was partially restored in 2020, when the dire impacts of COVID-19 and increased advocacy spurred the government to allow COFA migrants to enroll in Medicaid.[89] While access to federal benefits programs was restored under the most recent renewal of the COFA in 2024, for nearly 30 years, COFA migrants were excluded from the benefits of numerous critical social support services and programs.[90] This Part will discuss COFA migrant access to federal public benefits before and after the enactment of the PRWORA in 1996, and illustrate the necessity of these programs for many COFA migrants by focusing on the community of Marshallese migrants who live and work in Springdale, Arkansas.

A. COFA Migrant Access to Federal Benefit Programs Before 1996

Under the COFA, FAS citizens are classified as legal nonimmigrants, which usually includes tourists, foreign students, and temporary workers.[91] Unlike these

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[87] THOMAS & MARCOUX, *supra* note 67, at 48–50, 56–55.

[88] Michael R. Duke, *Marshall Islanders: Migration Patterns and Health-Care Challenges*, MIGRATION POL'Y INST. (May 22, 2014), https://www.migrationpolicy.org/article/marshall-islanders-migration-patterns-and-health-care-challenges [https://perma.cc/2BJH-PZ4W].

[89] Dan Diamond, *How 100,000 Pacific Islanders Got Their Health Care Back*, POLITICO (Jan. 1, 2021, at 04:30 EST), https://www.politico.com/news/2021/01/01/marshall-islands-health-care-453215 [https://perma.cc/BRF8-NMBT] (noting that newfound bipartisan congressional support helped overcome past renewal failures).

[90] *See id.*; NAT'L IMMIGR. L. CTR., FEDERAL AGENCY GUIDANCE REGARDING COFA ELIGIBILITY FOR PUBLIC PROGRAMS 1 (2024), https://www.nilc.org/resources/federal-agency-guidance-regarding-cofa-eligibility-for-public-programs [https://perma.cc/72DE-WUX5].

[91] *Nonimmigrant Classes of Admission*, U.S. DEP'T OF HOMELAND SEC.: OFF. OF HOMELAND

individuals, however, COFA migrants do not require a visa to live or work in the United States, and their period of stay is indefinite.[92] COFA migrants, as noncitizens, can be deported, and the United States government, through Congress, may alter the period for which they can remain in the country.[93] While the COFA was being negotiated and for ten years after its enactment, legal noncitizens were able to access federal programs—such as Supplemental Nutrition Assistance Program (SNAP), nonemergency Medicaid, Supplemental Security Income (SSI), and Aid to Families with Dependent Children (AFDC)—due to the eligibility scheme for these benefits at that time.[94] Before the PRWORA, there was no uniform federal standard for noncitizen eligibility—each benefit program's authorizing statute set its own restrictions.[95] Eligibility for major benefit programs like SSI, Medicaid, and AFDC for noncitizens was determined by whether the applicant was "permanently residing under color of law" (PRUCOL).[96] The PRUCOL test has two prongs: (1) does the United States government know that the person is present in the United States?; and (2) does the United States have no plans to deport or remove the person from the country?[97] If the FAS citizen was admitted to the United States under the COFA, issued an Arrival-Departure Record (I-94), and was not designated to be deported or removed, they would be eligible under this test.[98] Thus, many COFA migrants were able to avail themselves of programs that used this eligibility standard. However, this all dramatically changed in 1996 with the enactment of the PRWORA, when the safety net suddenly disappeared for COFA migrants with a stroke of a pen.

SEC. STAT., https://ohss.dhs.gov/topics/immigration/nonimmigrant/NonimmigrantCOA https://perma.cc/R2KD-Q6MN] (last visited Feb. 17, 2026); Compact of Free Association Act of 1985 (COFA), Pub. L. No. 99-239, § 141, 99 Stat. 1770 (codified as amended at 48 U.S.C. §§ 1901–12).

[92] U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 22, at 7.

[93] *See* Peskin, *supra* note 31, at 347, 354–55 (discussing how COFA migrants' contingent status in the United States conveys "an inclusion by exception").

[94] *See* TANYA BRODER & GABRIELLE LESSARD, NAT'L IMMIGR. L. CTR., OVERVIEW OF IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS 1–2 (2024), https://www.nilc.org/wp-content/uploads/2024/05/overview-immeligfedprograms-2024-05-08-1.pdf [https://perma.cc/5GQH-FEJV]; MORRIS ET AL., *supra* note 38, at 8.

[95] BEN HARRINGTON, CONG. RSCH. SERV., R46510, PRWORA'S RESTRICTIONS ON NONCITIZEN ELIGIBILITY FOR FEDERAL PUBLIC BENEFITS: LEGAL ISSUES 1 (2020).

[96] *Id.* at 1. This test is still used in some states and in some immigration contexts. *See* Steven Sacco & Sarika Saxena, *Permanently Residing Under Color of Law: A Practitioner's Guide to an Ambiguous Doctrine*, 23 CUNY L. REV. 364, 378–79, 382 (2020).

[97] ABIGAIL F. KOLKER, CONG. RSCH. SERV., RL34500, UNAUTHORIZED ALIENS' ACCESS TO FEDERAL BENEFITS: POLICY AND ISSUES 5 (2016).

[98] *See id.* (discussing the changing PRUCOL standards prior to the passage of PRWORA in 1996); THOMAS & MARCOUX, *supra* note 67, at 76–84 (detailing the immigration process and associated rights for COFA migrants and citizens of the FAS when entering the United States).

B. Access to Federal Benefit Programs After the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

On August 22, 1996, the PRWORA was signed into law, fulfilling President Clinton's promise to "end welfare as we know it."[99] The PRWORA caused sweeping reforms to the welfare and public benefits system in the United States by replacing the previous AFDC program—in which states were entitled to receive unlimited federal funds for reimbursement of state-administered benefit programs—with the Temporary Assistance for Needy Families (TANF) program, a cash-welfare block grant to states.[100] The PRWORA created a new blanket rule set for eligibility that would apply to most federal benefit programs.[101] One of the reasons stated by Congress for the move to TANF was to "end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage."[102] In addition to overhauling the welfare and public benefit programs for citizens, the PRWORA also created distinct eligibility requirements for noncitizen access to federal benefit programs, discarding the previous PRUCOL eligibility standard.[103] Under the new scheme, only certain noncitizens, through six specific exceptions, were determined as "qualified aliens" who would be eligible for federal benefits programs.[104] Congress explained these new eligibility requirements for noncitizens in the PRWORA, stating, "[s]elf-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes," and "[d]espite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State and local governments at increasing rates."[105] While further exceptions that allowed ineligible individuals to access certain emergency support systems were written into the PRWORA,[106] the effect was clear: the federal government would support those whom it determined were deserving of help. Those outside that definition were a burden on the system. The safety net had been rewoven, this time, with bigger holes than ever.

The PRWORA endowed state and area governments with a wide berth to create eligibility requirements for noncitizens without the involvement of the federal

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[99] Jacqueline Hagan, Nestor Rodriguez, Randy Capps & Nika Kabiri, *The Effects of Recent Welfare and Immigration Reforms on Immigrants' Access to Health Care*, 37 INT'L MIGRATION REV. 444, 446 (2003).

[100] Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, § 101, 110 Stat. 2105, 2110 (codified in scattered sections of the U.S. Code); *id.* § 103; JOE RICHARDSON & VEE BURKE, CONG. RSCH. SERV., RS20807, SHORT HISTORY OF THE 1996 WELFARE REFORM LAW, at CRS-1 (2001).

[101] Hagan et al., *supra* note 99, at 446.

[102] PRWORA § 103.

[103] Hagan, et al., *supra* note 99, at 446; HARRINGTON, *supra* note 95, at 1; *see, e.g.*, PRWORA §§ 401–03.

[104] A "qualified alien" is defined as an alien who, at the time of application for a federal public benefit is:

government.[107] States could elect to be more restrictive than the federal eligibility restrictions or more expansive with their criteria for which individuals may participate in any given program.[108] However, because more expansive programs under the PRWORA covering "non-qualified aliens" were unsupported by the federal government, states that chose to provide benefits to federally ineligible individuals were forced to shoulder the financial burden.[109]

The lack of an exception for COFA migrants in the PRWORA stripped them of eligibility for federal benefits programs previously available when the COFA was first signed—including Medicaid, SNAP, and TANF—leaving COFA migrants in the United States, with demonstrated needs for those programs, to fend for themselves. Yet even though they were excluded from federal programs, COFA migrants continued to contribute to the labor market and pay federal and state taxes.[110]

The reason for their omission in the enumerated exceptions in the PRWORA is unclear, though it has been described by some as a legislative oversight.[111] As a

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(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act,
(2) an alien who is granted asylum under section 208 of such Act,
(3) a refugee who is admitted to the United States under section 207 of such Act,
(4) an alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year,
(5) an alien whose deportation is being withheld under section 243(h) of such Act, or
(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980.

PRWORA §§ 401, 431. The definition of "qualified alien" serves as a source of considerable confusion in relation to other statutes that may include their own eligibility rules to qualify for other programs. The language of the PRWORA provides that its restrictions are "[n]otwithstanding any other provision of law," but does not indicate whether the PRWORA's rules would countermand the eligibility rules of an inconsistent statute, especially if the statute does not mention PRWORA as its standard for qualification. HARRINGTON, *supra* note 95, at 2 (alteration in original) (citing PRWORA § 401).

[105] PRWORA § 400(1)–(3).

[106] *E.g.*, *id.* § 401.

[107] KOLKER, *supra* note 97, at 4.

[108] *See* PRWORA § 412. The PRWORA gives states the authorization to determine the eligibility for state public benefits for qualified aliens, nonimmigrants under the Immigration and Nationality Act (INA), or an alien paroled under § 212(d)(5) of the INA. However, the PRWORA contains an exception that certain refugees, asylees, permanent resident aliens, veterans and members of the Armed Forces, and certain dependents shall be eligible for any state public benefits. *Id.*

[109] *See* Sacco & Saxena, *supra* note 96, at 378, 405. "Non-qualified aliens" are those who were not mentioned in the PRWORA as eligible. *See* PRWORA § 431.

[110] McElfish et al., *supra* note 23, at 639.

[111] *See*, *e.g.*, Diamond, *supra* note 89; Laura Kellams, *Federal Legislation Restores Benefits to Marshallese, At Long Last*, ARK. ADVOCS. FOR CHILD. & FAMS. (Mar. 9, 2024, at 14:16 PT),

result, COFA migrants who arrived after 1996 were in a much more precarious place than many similarly situated individuals in the United States. An examination of the Marshallese migrant community in Springdale, Arkansas, illustrates the Marshallese communities' particular need for vital federal support systems that were rendered unavailable to them because of the drafting of the PRWORA, and underscores how necessary these services are to COFA migrants who left to find more opportunities in the United States.

C. The Marshallese in Springdale, Arkansas

The Marshallese migration to Springdale, Arkansas, is often attributed to one man: John Moody.[112] John Moody was one of the first Marshallese to work on the line at a chicken processing plant in the 1980s.[113] Upon his return to the RMI, he spread the word: there were jobs to be had, and they were in Springdale.[114] There are upwards of 12,000 Marshallese in the Springdale area.[115] Poultry processors are the largest employers in Springdale, a small town in northwestern Arkansas.[116] This is unsurprising, as it is the birthplace of Tyson Foods, the largest poultry processing company in the world.[117] Processing plants are often comprised of a split labor market: migrants take the lower-paying, dangerous jobs, and local workers occupy the rest.[118] The same is true in Springdale. Latino and Marshallese workers comprise the bulk of the jobs in the processing plants.[119] However, the Marshallese migrants differ from other immigrant workers in one important way: because of the COFA, they are not bound by any visa or stay limitations. Accordingly, they are an attractive

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https://www.aradvocates.org/federal-legislation-restores-benefits-to-marshallese-at-long-last/ [https://perma.cc/3YRA-6V4V].

[112] Mary Babic, *Big Poultry Finds Workers in an Immigrant Community Known for its Culture of Forgiving*, OXFAM (Nov. 18, 2015), https://www.oxfamamerica.org/explore/stories/big-poultry-finds-workers-in-an-immigrant-community-known-for-its-culture-of-forgiving/ [https://perma.cc/FH4V-WJC8].

[113] *Id.*

[114] *Id.*

[115] April L. Brown, *Marshallese Community in Arkansas*, MARSHALLESE EDUC. INITIATIVE, https://www.mei.ngo/marshallese-in-arkansas [https://perma.cc/H5SY-FXD5] (last visited Feb. 17, 2026).

[116] *Springdale, Arkansas: The City of Legacy and Economic Vision*, BUS. VIEW MAG. (Oct. 31, 2024), https://businessviewmagazine.com/springdale-arkansas/ [https://perma.cc/XC73-DQWJ].

[117] *Our History*, TYSON FOODS, INC., https://www.tysonfoods.com/who-we-are/our-story/where-we-came-from/our-history [https://perma.cc/FHT6-AW3K] (last visited Feb. 17, 2026).

[118] Jin Young Choi & Douglas H. Constance, *Marshallese Migrants and Poultry Processing*, 34 J. RURAL SOC. SCIS., no. 1, 2019, at 1, 4.

[119] *Id.* at 2.

source of migrant labor to poultry processors in the area.[120] Marshallese workers represent 30% of Tyson's workforce in Springdale.[121] An overwhelming majority of that number are employed as line workers, who spend their days at work in hazardous conditions.[122]

1. Work Conditions

Poultry processing is one of the most dangerous industries to work in, especially for line workers. According to Bureau of Labor Statistics reports, in 2019, nonfatal injury and illness rates were higher in poultry processing than in any other private industry.[123] Because of the variance in animal sizes, chicken processing must be done by human hands; line workers use sharp knives to cut carcasses in an assembly line.[124] Chicken plants process around 140 birds a minute, giving workers a matter of seconds per bird to skillfully remove the chicken parts.[125] With the quick speed of the line, paired with the sharp tools needed to complete the work, one can understand why the poultry processing industry is nationally the highest reporter of occupational finger amputations.[126] John Moody himself lost the tip of his finger to a saw accident at work.[127]

A 2019 study of Marshallese migrants who worked in poultry processing in Arkansas found that 85% of respondents were line workers; employed in jobs like deboning, packing, cutting, evisceration, and sanitation.[128] Most Marshallese work

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[120] *Id.* at 2, 22–23.

[121] Brown, *supra* note 115.

[122] Choi & Constance, *supra* note 118, at 12–13, 16–17.

[123] Nina Lakhani, *Working for America's Biggest Chicken Processor is No Picnic*, MOTHER JONES (Aug. 12, 2021) (citing *Injuries, Illnesses, and Fatalities*, U.S. DEP'T OF LAB.: U.S. BUREAU OF LAB. STAT. (Nov. 4, 2020), https://www.bls.gov/iif/nonfatal-injuries-and-illnesses-tables/soii-summary-historical/summary-table-1-2019-national [https://perma.cc/X7Q2-2TLS]), https://www.motherjones.com/environment/2021/08/chicken-processor-tyson-foods-guardian-investigation-workers-environment-working-conditions-arkansas-monopoly/ [https://perma.cc/S595-LTKS].

[124] *See* Dylan Matthews & Byrd Pinkerton, *How Chicken Plants Became More Dangerous Places to Work Than Coal Mines*, VOX (Oct. 7, 2020, at 05:37 PDT), https://www.vox.com/future-perfect/21502225/chicken-meatpacking-plant-future-perfect-podcast [https://perma.cc/SQ8D-GMC3]. *But see* Megan Pellegrini, *Cutting and Deboning: Computerized Butchers*, NAT'L PROVISIONER: INDEP. PROCESSOR (Oct. 23, 2015), https://www.provisioneronline.com/articles/102447-cutting-and-deboning-computerized-butchers [https://perma.cc/DS4K-7BMP] (describing technology that can perform this task nearly as well as humans, although it is not widely available).

[125] Matthews & Pinkerton, *supra* note 124.

[126] Remington L. Nevin, Jon Bernt & Michael Hodgson, *Association of Poultry Processing Industry Exposures with Reports of Occupational Finger Amputations: Results of an Analysis of OSHA Severe Injury Report (SIR) Data*, 59 J. OCCUPATIONAL & ENV'T MED., at e159, e159 (2017).

[127] Babic, *supra* note 112.

[128] Choi & Constance, *supra* note 118, at 11, 13.

the second shift, which starts in the early afternoon and ends late in the evening, and nearly all of them reported working overtime, but many did not get paid for overtime.[129] Doing this dangerous job at a fast pace, for hours on end, already seems like a recipe for an injury; however, it is not the only occupational risk that comes with working at a poultry processing plant.

In addition to the dangers that come with working on the line, Marshallese employees at poultry processing plants are exposed to many other safety risks; occupational injuries in the poultry industry are five times the national average.[130] Because Arkansas does not have a state-level occupational safety and health program, poultry processing plants in Arkansas are regulated by the federal Occupational, Safety, and Health Administration (OSHA).[131] According to OSHA materials on the poultry processing industry, line workers in processing facilities must contend with "high noise levels, dangerous equipment, slippery floors, musculoskeletal disorders, and hazardous chemicals" as well as increased risk of exposure to diseases stemming from "biological hazards associated with handling live birds or exposures to poultry feces and dusts."[132] From October 2024 to September 2025, a total of 61 citations were issued by OSHA as a result of inspections of poultry processing workplaces of all employee sizes.[133] Historically, the main violations in the poultry industry were related to record keeping (which would include underreporting injuries), fast line speeds, and improper securing of equipment and hazardous chemicals.[134] While proper education for workers on best safety practices seems necessary given the hazards that exist in line work, many Marshallese workers do not receive formal safety training; when they do receive safety training they usually do not fully comprehend it.[135]

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[129] *Id.* at 19.

[130] *Id.* at 5.

[131] *State Plans*, U.S. DEP'T OF LAB.: OCCUPATIONAL SAFETY & HEALTH ADMIN., https://www.osha.gov/stateplans (follow "State Plans" hyperlink; then click the State of Arkansas on the U.S. map) [https://perma.cc/S8RH-4EK4] (last visited Feb. 17, 2026).

[132] *Poultry Processing*, U.S. DEP'T OF LAB.: OCCUPATIONAL SAFETY & HEALTH ADMIN., https://www.osha.gov/poultry-processing [https://perma.cc/R4YP-AFB8] (last visited Feb. 16, 2026).

[133] *Frequently Cited OSHA Standards Results: NAICS Code: 311615 Poultry Processing*, U.S. DEP'T OF LAB.: OCCUPATIONAL SAFETY & HEALTH ADMIN., https://www.osha.gov/ords/imis/citedstandard.html (follow "Frequently Cited OSHA Standards" hyperlink; then search NAICS Code 311615) [https://perma.cc/WB9R-VB64] (last visited Feb. 16, 2026); *see also* Choi & Constance, *supra* note 118, at 5 ("A 2013 report indicated that the four largest companies committed over 100 separate violations of OSHA health and safety regulations over the preceding five years." (citation omitted)).

[134] Choi & Constance, *supra* note 118, at 5.

[135] *See id.* at 14–15.

Of the Marshallese workers surveyed in the 2019 study, many did not receive adequate job or workplace policy training.[136] The onboarding process for these workers was often informal and not done in Marshallese.[137] Most Marshallese workers received information about safety policies and the internal "point system" tied to termination actions during their orientation process, but 80% of the respondents received the information in non-Marshallese languages.[138] Even if they were trained on the company's safety policies, many of the Marshallese workers reported that the company did not follow them.[139] Markedly fewer workers reported that they had received training on company policies regarding injuries and illnesses, workers' compensation, and discrimination.[140]

Unfortunately, if Marshallese workers are injured on the job, discover safety violations, or experience harassment or discrimination, many of them do not report these incidents or infractions. Language barriers and fear of losing their jobs keep Marshallese from pursuing workers' compensation and other civil remedies for injuries sustained in the course of their employment as poultry workers.[141] While the Marshallese are eligible for workers' compensation, following through with a claim is a different story.[142] Receiving any compensation for injuries sustained in the course of employment is contingent on reporting the injury to the employer or filing a complaint with an agency. Very few of the Marshallese workers surveyed filed formal complaints to a government agency, stating they "did not report their work-related injuries and illnesses due to fear of negative sanctions and job termination," and even if they did report their injuries, "they rarely received workers' compensation."[143] The same results appear with regard to harassment or discrimination claims: even though half of the respondents said they had experienced harassment or discrimination in the workplace, most of the Marshallese workers did not file a claim with the government because they feared retaliation.[144] Furthermore, of those who did file a claim, many did not receive any response from the government that alleviated the problem.[145] Of the workers studied, only one person who filed a complaint with the government received a response that changed the workplace.[146] While poultry companies should create a workplace that follows

[136] *See id.* at 14.
[137] *Id.* at 17.
[138] *Id.* at 14.
[139] *Id.*
[140] *Id.*
[141] *Id.* at 20, 22.
[142] *See id.* at 17, 20.
[143] *Id.* at 20.
[144] *Id.*
[145] *Id.* at 16–17, 20.
[146] *Id.* at 20.

safety protocols and is free of discrimination and harassment, the government also has a duty to enforce the standards that are meant to protect vulnerable workers.

2. Poverty and Food Insecurity

Food processing is not only dangerous, but also low paying. Native Hawaiian and Pacific Islanders (NHPI) have the highest rate of poverty in Arkansas, with more than 32% of NHPI individuals living below the poverty line.[147] The 2010 U.S. Census reported that of the Marshallese families living northwest Arkansas, over 75% were considered low income, and 52% lived in poverty.[148] By comparison, the national average for living in poverty is just 15%.[149] As of 2022, at Tyson's plant, most noncitizen workers make approximately $15.20 an hour, and over 70% of the noncitizens in Springdale have yearly incomes of around $35,000.[150] The basic cost of living in Arkansas for a family of four is $46,000.[151]

Marshallese households are usually multi-generational, and for most families, only a single family member works to support a large household of children and elderly family members.[152] However, the minimum wage paid by Tyson is likely considered a good opportunity by most Marshallese migrating from the RMI, as the minimum wage in the RMI is currently only $4.00 per hour.[153] It follows that many

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[147] Antoinette Grajeda, *Arkansas' Marshallese Community Again Eligible for SNAP Benefits*, ARK. ADVOC. (Oct. 1, 2024, at 06:00 PT), https://arkansasadvocate.com/2024/10/01/arkansas-marshallese-community-again-eligible-for-snap-benefits/ [https://perma.cc/J9QA-P6HD].

[148] Tanya Harris Joshua, *Interior Supports Marshallese Community in Arkansas with Grant to Marshallese Resource and Educational Center*, U.S. DEP'T OF THE INTERIOR: OFF. OF INSULAR AFFS. (Nov. 30, 2020), https://www.doi.gov/oia/press/interior-supports-marshallese-community-arkansas-grant-marshallese-resource-and [https://perma.cc/9PMX-2X3S].

[149] *Id.*

[150] Olivia Paschal, *The Modern-Day Company Towns of Arkansas*, AM. PROSPECT (Aug. 1, 2022), https://prospect.org/power/modern-day-company-towns-of-arkansas/ [https://perma.cc/3UGT-6UVT].

[151] *Poverty in Arkansas*, JUNIOR LEAGUE OF LITTLE ROCK, https://www.jllr.org/poverty-in-arkansas/ (on file the Lewis & Clark Law Review) (last visited Feb. 16, 2026). *But see* UNITED FOR ALICE, THE STATE OF ALICE IN ARKANSAS: 2025 UPDATE ON FINANCIAL HARDSHIP 3–5 (2025), https://aliceinar.org/wp-content/uploads/2025/05/2025-State-of-ALICE-Report-Arkansas.pdf [https://perma.cc/M927-UVH4] (providing calculations and data that the cost of living for family of four with one infant and one preschooler in Arkansas is just over $70,000 per year).

[152] Pearl Anna McElfish, Rachel S. Purvis, Gregory G. Maskarinec, Williamina Ioanna Bing, Christopher J. Jacob et al., *Interpretive Policy Analysis: Marshallese COFA Migrants and the Affordable Care Act*, 15 INT'L J. FOR EQUITY HEALTH, 2016, at 1, 6, 9.

[153] MARK STURTON, GRAD. SCH. USA & ECONMAP, RMI ECONOMIC REVIEW: REPUBLIC OF THE MARSHALL ISLANDS 6 (2025), https://pitiviti.org/storage/dm/2025/05/rmi-econreview-2025-digital-final-20250508215213289.pdf [https://perma.cc/XF72-2QTG] (noting that after several years without approved increases, the government enacted legislation at the end of FY 2024 raising the minimum wage to $4.00 per hour beginning in FY 2025, with scheduled annual

Marshallese arrive in the United States with little money and work month-to-month without any savings. A lack of economic stability often leads low-income households to cut back on essential purchases, like food.[154]

Many Marshallese working in Arkansas suffer from food insecurity. During the pandemic, nearly 80% of Marshallese reported food insecurity, versus 15% for the entire population of the United States in the same period.[155] Alarmingly, a study found that Marshallese youth, in particular, experience more food insecurity than the youth of any other racial group in northwestern Arkansas, and attributed this fact largely to their exclusion from federal food assistance.[156] While the Women, Infants, and Children program (WIC) was available to COFA migrants who qualified for the program,[157] other federal food-assistance safety net programs for low-income families, such as SNAP, which were meant to catch individuals just like the Marshallese migrants in Springdale, were unavailable.[158] Thus, low-income Marshallese migrant families had to deal with the cruel irony of providing essential work to put food on the table for countless American families, while being unable to afford food for themselves.

3. Education Disparities

Even though the promotion of education was an express obligation of the administration of the TTPI, and COFA funding is allocated directly to the support of education in the Marshall Islands, many Marshallese who arrive in Springdale lack a strong educational foundation due to the education system in the RMI.[159] More than half of the Marshallese workers at Tyson in 2019 lacked greater than a primary-school education.[160]

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increases to $5.25 by FY 2028).

[154] *See* Don E. Willis & Kevin M. Fitzpatrick, *Adolescent Food Insecurity: The Special Case of Marshallese Youth in North-west Arkansas, USA*, 23 PUB. HEALTH NUTRITION 544, 551 (2020).

[155] LAURA KELLAMS, ARK. ADVOCS. FOR CHILD. AND FAMS., HOW FEDERAL POLICY MADE HUNGER WORSE: INEQUITY FOR MARSHALLESE MIGRANTS IN THE FOOD SAFETY NET 2–3 (2023), https://www.aradvocates.org/wp-content/uploads/MI-SNAP-report.webfinal.8.24.23.pdf [https://perma.cc/APS6-R6Y3].

[156] Willis & Fitzpatrick, *supra* note 154, at 548, 550–51.

[157] Federal Means-Tested Public Benefits, 63 Fed. Reg. 36653, 36653–54 (July 7, 1998); *see also* 42 U.S.C. § 1786 (establishing the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) to safeguard the health of low-income women, infants, and children by providing supplemental food).

[158] *See* KELLAMS, *supra* note 155, at 2–3, 6.

[159] S.C. Res. 21, *supra* note 32, art. 6, ¶ 4; LUM & TUPUOLA, *supra* note 20, at 7–8, 14; Choi & Constance, *supra* note 118, at 7, 12.

[160] S.N. McClain, C. Bruch, M. Nakayama & M. Laelan, *Migration with Dignity*: *A Case Study on the Livelihood Transition of Marshallese to Springdale, Arkansas*, 21 J. INT'L MIGRATION & INTEGRATION 847, 856–57 (2020).

The Office of Insular Affairs has reported that 50% of high school graduates in the RMI attending college have only the equivalent of a fourth- to sixth-grade education in the United States.[161] There is only one higher-education institution in the RMI, which offers a two-year program.[162] Even if Marshallese migrants did have professional certifications earned in the RMI, they may not be recognized in Arkansas.[163]

Once in the United States, education outcomes are not positive either. Marshallese youth in the Springdale public school system have a low graduation rate, with slightly more than 50% graduating from high school and fewer pursuing higher education.[164] Higher education is not only linked to better employment opportunities, but also to better health outcomes.[165] For those Marshallese migrants who did decide to pursue higher education in Arkansas, financial barriers awaited them. Until eligibility was reinstated in 2024, certain student financial assistance program funds available under Title IV of the Higher Education Act of 1965—Federal Work Study (FWS) and Federal Supplemental Educational Opportunity Grants (FSEOG)—were unavailable to Marshallese migrants attending higher education institutions in the United States.[166] At the level of poverty of the Marshallese community in Springdale, even in-state tuition would have likely been difficult to afford for many families struggling to make ends meet.[167]

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[161] U.S. GOV'T ACCOUNTABILITY OFF., GAO-02-70, FOREIGN ASSISTANCE: EFFECTIVENESS AND ACCOUNTABILITY PROBLEMS COMMON IN U.S. PROGRAMS TO ASSIST TWO MICRONESIAN NATIONS 30 (2002).

[162] MORRIS ET AL., *supra* note 38, at 8–9.

[163] Shanna N. McClain, Jennifer Seru & Hermon Lajar, *Migration, Transition, and Livelihoods: A Comparative Analysis of Marshallese Pre- and Post-Migration to the United States*, 14 J. DISASTER RSCH. 1262, 1264 (2019).

[164] Joshua, *supra* note 148.

[165] *Enrollment in Higher Education*, U.S. DEP'T OF HEALTH & HUM. SERVS.: OFF. OF DISEASE PREVENTION & HEALTH PROMOTION, https://odphp.health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/enrollment-higher-education [https://perma.cc/T5HQ-ATGZ] (last visited Feb. 17, 2026).

[166] Consolidated Appropriations Act of 2024, Pub. L. No. 118-42, § 209, 138 Stat. 25, 441–42 (codified as amended at 48 U.S.C. § 1988); U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 161, at 29, 72, 109–11; *see (GENERAL-24-50) In-State Tuition and Title IV Eligibility for Citizens of the Freely Associated States*, U.S. DEPT. OF EDUC.: FED. STUDENT AID (Apr. 29, 2024), https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2024-04-29/state-tuition-and-title-iv-eligibility-citizens-freely-associated-states [https://perma.cc/4ZXU-DPJK]; *see also* McElfish et al., *supra* note 23, at 638 ("PRWORA restricted access to federally funded programs for most legal immigrants, including COFA migrants who were excluded from the category of 'qualified immigrants.' Although eligibility for federal benefits programs was incrementally restored for other legal immigrants, COFA migrants continue to be excluded." (footnotes omitted)).

[167] To illustrate, the subtotal for tuition and fees at the University of Arkansas for 2024–2025 was $10,104; the calculated total cost of attendance if living at home with a parent was

4. Health Vulnerabilities

Because of the poor health and limited health care options in the RMI,[168] one of the main reasons for Marshallese to migrate to the United States is better health care.[169] In the RMI, the population is afflicted with many health problems, including tuberculosis, hypertension, thyroid tumors, and Hansen's Disease.[170] Smaller atolls in the nation only have the most basic health care; even in urban parts of the RMI, specialized care is unavailable and patients must be airlifted to hospitals in Manila or Honolulu.[171] Health consultations are inexpensive, costing around $5.00.[172] Because of the many health problems and standard of care in the RMI, Marshallese migrants—particularly the elderly—come to the United States for better health care.[173] However, the Marshallese migrants who arrive in Springdale often have two common difficulties: affording health insurance and medical care for their families and navigating the healthcare system in the United States.[174]

After the PRWORA, Marshallese migrants lost their eligibility for Medicaid and the Children's Health Insurance Program (CHIP), which provides healthcare for children in families who cannot afford health insurance but whose incomes are too high for Medicaid.[175] Arkansas elected not to fund Medicaid for migrants in the state; however, it did extend its state CHIP program to migrant children in 2017.[176] While those employed at the plants usually received insurance coverage as part of their compensation, the cost of covering all members of their typically large families was often too expensive.[177] In 2019, 50% of Marshallese in Arkansas were uninsured.[178] Without insurance, many Marshallese did not seek medical attention because of the prohibitive cost of care.[179]

$24,308. *See Financial Aid: Cost of Attendance 2024–2025*, UNIV. ARK., https://finaid.uark.edu/cost-of-attendance.php [https://web.archive.org/web/20250108175400/https://finaid.uark.edu/cost-of-attendance.php] (last visited Feb. 17, 2026). This is approximately 70% of the $35,000 per annum that the 70% of noncitizens workers make in Springdale. Paschal, *supra* note 150.

168 *See* discussion *supra* Section I.B.1.

169 McElfish et al., *supra* note 23, at 638–39.

170 Duke, *supra* note 88; *see* discussion *supra* Section I.B.1.

171 Michael R. Duke, *Neocolonialism and Health Care Access among Marshall Islanders in the United States*, 31 MED. ANTHROPOLOGY Q. 422, 427 (2017).

172 *Id.*

173 *Id.* at 428.

174 *See id.* at 432–33.

175 McElfish et al., *supra* note 23, at 638–39.

176 Pearl A. McElfish, Rachel S. Purvis, Sheldon Riklon & Seiji Yamada, *Compact of Free Association Migrants and Health Insurance Policies: Barriers and Solutions to Improve Health Equity*, 56 INQUIRY, 2019, at 1, 3.

177 McElfish et al., *supra* note 23, at 639.

178 McElfish et al., *supra* note 176, at 3.

179 McElfish et al., *supra* note 152, at 6, 9.

Legislation that, again, did not consider the particular position of Marshallese migrants continued to cause practical problems for the community. The Patient Protection and Affordable Care Act of 2010 (ACA), which was created to expand access to healthcare and insurance, required legal residents to enroll in an ACA-compliant insurance plan or face penalties.[180] While tax credits to assist with purchasing insurance were available to COFA migrants under the ACA, they were based on earnings over 133% of the poverty level—a level most Marshallese families did not reach.[181] Enrollees below that level would usually qualify for Medicaid or a Medicaid expansion provision in the ACA, and thus not be required to pay insurance premiums.[182] Yet, because Marshallese migrants were not eligible for Medicaid, they were trapped in a dizzying conundrum until the tax penalty was repealed in 2019: pay for premiums you cannot afford, or pay the penalty of not being insured.[183]

The pandemic also affected Marshallese migrants in Arkansas to a greater degree than most communities. For Marshallese residents working at poultry processing plants in Springdale—which spans both Benton and Washington Counties—COVID-19 was particularly dangerous, as workers in these plants face a high risk of exposure to contagious diseases.[184] On the production line, where most Marshallese work, plants often cannot comply with CDC recommendations for distancing between workers without reducing their capacity.[185] Of the documented COVID-19 infections of Marshallese residents in Benton and Washington Counties, 28% were relatable to employment at a poultry processing plant.[186] When compounded with the vulnerabilities that Marshallese migrants already faced, the outcomes were staggering: while Marshallese only represented 2.4% of the total population of Benton and Washington counties, 19% of all COVID-19 cases in

[180] McElfish et al., *supra* note 176, at 2; *see* Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, § 1501, 124 Stat. 119, 242–46 (codified in scattered sections of the U.S. Code).

[181] McElfish et al., *supra* note 152, at 9.

[182] *See id.*

[183] *See* Tax Cuts and Jobs Act, Pub. L. No. 115-97, § 11081, 131 Stat. 2054, 2092 (2017) (codified as amended at 26 U.S.C. § 5000A).

[184] *See* Brett Rowland, Cari A. Bogulski, Don E. Willis, Aaron J. Scoot, Erin E. Gloster & Jennifer A. Anderson, *Experiences of Marshallese Food Processing Workers During the COVID-19 Pandemic*, 27 J. AGROMEDICINE 292, 293 (2022).

[185] Nicole Narea, *Why Meatpacking Plants Have Become Coronavirus Hot Spots*, VOX (May 19, 2020, at 05:40 PDT), https://www.vox.com/2020/5/19/21259000/meat-shortage-meatpacking-plants-coronavirus [https://perma.cc/3AWM-J9JS].

[186] Rowland et al., *supra* note 184, at 293.

those counties were Marshallese.[187] Between March and June 2020, 38% of all deaths from COVID-19 in the same two counties were Marshallese.[188]

Even when Marshallese migrants did attempt to seek care, navigating the healthcare system in the United States was a barrier to receiving medical attention. The healthcare system in the United States is different from the system in the RMI, and "insurance premiums, open enrollment periods, co-pays, and primary care providers . . . [are] confusing to Marshallese migrants" and not well understood.[189] Marshallese migrants also had difficulties interacting with non-Marshallese staff; staff members often did not understand Marshallese eligibility for programs and how health care laws operated concerning COFA migrants, causing more frustration and confusion among Marshallese migrants due to the contradictory information they would receive.[190]

D. COFA Migrants Outside of Springdale

While the experiences of the Marshallese community in Springdale are only a snapshot of the struggles that Marshallese migrants who lived and worked in the United States endured without full federal benefits, their story is not so unique. States with large populations of COFA migrants reported similar outcomes concerning health, food insecurity, and education—demonstrating COFA migrants' need for those critical support systems created by the United States to help those in their very position.[191] However, COFA migrants have little power to push for change once they arrive in the United States.

Communities that arrive in the United States under the COFA cannot advocate for themselves because they cannot utilize the usual avenues of civic participation to elect leaders who would enact legislation and create favorable state and federal policies for COFA migrants. As noncitizens, COFA migrants are unable to participate in federal and state elections, and receive no representation in the bodies that govern their day-to-day lives.[192] Furthermore, "federal courts have determined that states are permitted to provide disparate treatment to COFA migrants on the basis of alienage in order to protect their fiscal condition so long as Congress provided a pathway for doing so."[193] Accordingly, COFA communities

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[187] *Id.*

[188] *Id.*

[189] McElfish et al., *supra* note 152, at 5.

[190] *Id.* at 4–5, 10.

[191] *See generally* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 22 (documenting that COFA migrants who are not eligible for federal benefits reportedly struggle finding stability through employment, health care, and educational opportunities).

[192] Peskin, *supra* note 31, at 367.

[193] *Id.* (citing Basiente v. Glickman, 242 F.3d 1137 (9th Cir. 2001); Korab v. Fink, 797 F.3d 572 (9th Cir. 2014)).

must rely on others to appeal to the government of their destination state to enact change. The process is long and slow. Before the restoration of Medicaid eligibility in 2021, a total of 22 bills were introduced in Congress in an attempt to restore federal benefits to COFA migrants and to support states with large COFA migrant populations.[194] It took 12 years of community organizing and bipartisan support, paired with a global pandemic, to spur the government into that incremental expansion of the federal benefits. In the meantime, the destination states were left carrying the financial burden of providing a safety net to these communities, and the COFA migrants were left hoping they would not fall through it.

III. LOOKING TOWARD THE FUTURE

The United States might be on track to give a damn. While the oversight that removed the safety net for Marshallese migrants in the United States via the COFA has thankfully been incrementally repaired with the restoration of FAS citizen access to Medicare in 2020 and an updated eligibility exception to the PRWORA with the latest renewal of the COFA in 2024, there remain multiple factors that will continue to be barriers to Marshallese coming to the United States in search of a better life.

There are many different ways that agencies can improve access to federal benefit programs that the Marshallese and other COFA migrants are now eligible for. However, as demonstrated by the experiences of vulnerable communities such as the Marshallese in Springdale, access to competent, affordable, and compassionate healthcare is paramount. In addition, general unawareness of COFA migrants and their unique status threatens another omission in future legislation. This Part will begin by examining the barriers that remain for Marshallese migrant participation in federal benefit programs. Next, it will discuss the ways that increased language access can help mitigate these barriers for Marshallese migrants in the United States, with specific regard to healthcare. In closing, it will discuss how recognition of and increased education about the plight of the Marshallese can help prevent gaps that would again deny COFA migrants' coverage under future laws.

A. Restored Access Does Not Necessarily Mean Use

As a result of the Consolidated Appropriations Act of 2024, the definition of "qualified alien" has expanded to include "an individual who lawfully resides in the United States" pursuant to the COFA.[195] However, even if the Marshallese have regained the capacity to access federal public benefit programs, barriers still exist that impede actual usage of the programs.

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[194] *Id.* at 367.

[195] Consolidated Appropriations Act, 2024, Pub. L. No. 118-42, § 209(f), 138 Stat. 25, 438 (codified as amended at 8 U.S.C. § 1612).

People not born in the United States but who are eligible for federal benefits generally use these benefits at lower rates than those who were born in the United States.[196] While there are external factors—such as a political climate—that could chill noncitizens from pursuing benefits they are qualified for, it is often bureaucratic burdens that come with applying and maintaining access to programs that discourage use.[197] To access, re-establish, or maintain their participation in public safety net programs, applicants must interact with federal or state agencies—a daunting task for individuals who cannot speak English well.[198] For example, when the suspension of Medicaid recertification requirements ended after the pandemic, over 25 million people were disenrolled from Medicaid as a result of not fulfilling the requirements, with the number of disenrolled individuals likely "disproportionally higher among federally eligible noncitizens, especially those with language barriers."[199] Furthermore, if the individuals in state or federal agencies administering these programs do not know about COFA migrants' updated eligibility to federal benefit programs, there is a possibility that their application to these programs may be stymied or denied during processing.[200]

B. Recommendations

To help mitigate these barriers to federal benefit program access for Marshallese migrants, I recommend two things: (1) federal funding recipients that service Marshallese migrants, especially those in health care, should increase language access in their programs and activities so more members of the community can access affordable health care; and (2) lawmakers should increase their knowledge about the Marshallese, their history, and their current status, so that gaps in the safety net do not reappear.

1. Increase Language Access

Many Marshallese migrants in the United States would be considered "Limited English Proficient" (LEP) individuals. LEP individuals are individuals "who do not speak English as their primary language and who have a limited ability to read, speak, write or understand English."[201] A study conducted in 2021 showed that being LEP is associated with poor health in the Marshallese community—impacting

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[196] VALERIE LACARTE, MIGRATION POL'Y INST., EXPLAINER: IMMIGRANTS AND THE USE OF PUBLIC BENEFITS IN THE UNITED STATES 2 (2024), https://www.migrationpolicy.org/content/immigrants-public-benefits-us [https://perma.cc/55HB-VH5X].

[197] *Id.*

[198] *Id.*

[199] *Id.*

[200] *See* discussion *supra* Section II.C.4.

[201] U.S. DEP'T OF JUST., LIMITED ENGLISH PROFICIENCY (LEP): AFFIRMING LEP ACCESS AND COMPLIANCE IN FEDERAL AND FEDERALLY ASSISTED PROGRAMS (2002), https://cops.usdoj.gov/pdf/LEP-recipient-factsheet.pdf [https://perma.cc/RZ5M-VQFM?type=image].

the delivery of care, contributing to medication non-adherence, and causing patients to skip or miss appointments because interpreters are not available.[202] These findings track with prior findings across the U.S. population: individuals who are LEP were in poorer health than those who had high English proficiency.[203] Language resources, such as oral interpreters and translated vital documents, are essential for increasing Marshallese access to federal and state public benefits for which they are now qualified. The federal government and state governments should ensure that these resources are available in locations with large Marshallese communities, even if there is not an affirmative duty to do so, especially with regard to health care. Furthermore, there should be clearer regulations concerning agencies' obligations to provide non-English communications and resources to increase the enforceability of language access rights.

Denial of access to programs by failing to provide language assistance services can constitute national origin discrimination under Title VI of the Civil Rights Act of 1964.[204] In *Lau v. Nichols*, Chinese students who did not speak English and attended schools within the San Francisco Unified School District filed a class action against the District, claiming that by failing to provide bilingual education to non-English-speaking students, the District had violated their Fourteenth Amendment rights and section 601 of the Civil Rights Act, which prohibits discrimination based on "'race, color, or national origin,' in 'any program or activity receiving Federal financial assistance.'"[205] The Court held that the District's failure to provide supplemental English courses to these students was a violation of Title VI, explaining that California state law required students to become proficient in English and to achieve that aim, "there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."[206] After *Lau*, lower federal courts have also held that language discrimination can constitute national origin discrimination.[207] However,

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[202] Pearl A. McElfish, Aaron J. Scott, Brett Rowland, Holly C. Felix, Marie-Rachelle Narcisse et al., *Investigating the Association Between English Proficiency and General Health Among Marshallese Adults in the United States*, 32 J. HEALTH CARE FOR POOR & UNDERSERVED 724, 726–27 (2021).

[203] Sylvia E. Twersky, Rebeca Jefferson, Lisbet Garcia-Ortiz, Erin Williams & Carol Pina, *The Impact of Limited English Proficiency on Healthcare Access and Outcomes in the U.S.: A Scoping Review*, 12 HEALTHCARE, 2024, at 1, 33 (2024).

[204] *See* Lau v. Nichols, 414 U.S. 563, 568 (1974).

[205] *Id.* at 564–66 (quoting 42 U.S.C. § 2000d).

[206] *Id.* at 565–66.

[207] *See, e.g.*, United States v. Maricopa Cnty., 915 F. Supp. 2d 1073, 1079 (D. Ariz. 2012) ("[L]ongstanding case law, federal regulations and agency interpretation of those regulations hold language-based discrimination constitutes a form of national origin discrimination under Title VI" (citing *Lau*, 414 U.S. 563)); Colwell v. Dep't of Health & Hum. Servs., 558 F.3d 1112,

there is currently no private right of action to challenge language-based discrimination under a disparate impact theory in court, leaving only intentional discrimination claims to be considered.[208] Now, agencies are the only governmental entity that can enforce Title VI disparate impact regulations.[209] The ACA's section 1557 states that individuals "shall not, on the ground prohibited under title VI of the Civil Rights Act of 1964 . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance," and "[n]othing in this title . . . shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals aggrieved under" the referenced civil rights statute.[210] However, a lack of legally enforceable language-access regulations has slowed progress toward more accessible health care for LEP individuals, leaving most improvements dependent on voluntary agency action.

The exact language-access obligations of federal funding recipients were unclear under the Department of Justice (DOJ) guidance and the subsequent Department of Health and Human Services (HHS) guidance.[211] Executive Order 13166, which was enacted by President Clinton in 2000, directed federal agencies to develop and implement systems to ensure meaningful access to their services for LEP individuals and publish guidance regarding their obligations under Title VI, enforced by the DOJ.[212] The HHS guidance, mirroring the DOJ guidance, required recipients of federal funding to "take reasonable steps to ensure meaningful access to their

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1116–17 (9th Cir. 2009) (relying on the holding in *Lau* to find that "discrimination against LEP individuals was discrimination based on national origin in violation of Title VI" (citing *Lau*, 414 U.S. at 567–68)); Pabon v. Levine, 70 F.R.D. 674, 677 (S.D.N.Y. 1976) (recognizing that federal benefits programs which excluded Spanish-speaking minorities violated Title VI (citing *Lau*, 414 U.S. at 567)).

[208] Alexander v. Sandoval, 532 U.S. 275, 285, 293 (2001) (holding that there is no private right of action to enforce regulations under Title VI); *see also* Helen Tran & Déodonné Bhattarai, *From* Lau v. Nichols *to the Affordable Care Act: Forty Years of Ensuring Meaningful Access in Health Care for Limited English Proficient Asian Americans, Native Hawaiians, and Pacific Islanders*, 24 ASIAN AM. POL'Y REV., 2014, at 7, 10–11 (citing the decision in *Sandoval* as the one which "[took] away the ability of individuals to challenge inadequate language assistance services using a disparate impact theory in court").

[209] Tran & Bhattarai, *supra* note 208, at 11.

[210] *Id.* at 12–13 (internal quotation and citation omitted).

[211] *Id.* at 9–10. *See generally* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47311 (Aug. 8, 2003) [hereinafter Title VI Guidance] (describing the HHS's nonregulatory guidance—which they copied from the DOJ—establishing a flexible, four-factor framework requiring recipients of federal financial assistance to take reasonable steps to ensure meaningful access for limited English proficient persons).

[212] Title VI Guidance, *supra* note 211, at 47312; Exec. Order No. 13166, 65 Fed. Reg. 50121, 50121 (Aug. 16, 2000).

programs and activities by LEP persons."[213] "Meaningful access" is not defined in the guidance or Executive Order, leaving it up to the agencies to interpret and decide what it might mean for them.[214] The guidance states that the standard is "flexible and fact-dependent," and provides a test to assess if a federal funding recipient's language assistance measures are sufficient.[215] The test analyzes four factors:

> (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
>
> (2) the frequency with which LEP individuals come in contact with the program;
>
> (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and
>
> (4) the resources available to the grantee/recipient and costs.[216]

This test, however, was deemed to be a "starting point," leaving it to the fund recipient to decide what reasonable steps it should take, if any, based on the results, rather than the results being evidence of a duty to act.[217]

The guidance also sets forth a "safe harbor rule" for fund recipients' written-translation obligations.[218] Again, while not an enforceable minimum standard, if the fund recipient "provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered," the action will be "considered *strong evidence of compliance* with the recipient's written-translation obligations."[219] Furthermore, in 2014, the DOJ stated in updated guidance that "[t]he failure to provide written translations under the circumstances outlined . . . does not mean there is non-compliance."[220] This highlights that the language of Title VI guidance is advisory, rather than mandatory.[221] Courts have come to a similar conclusion.

In 2022, the District Court of New Mexico found that recipient entities have to provide "taglines" indicating the *availability* of language services, but have no

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[213] Title VI Guidance, *supra* note 211, at 47314.

[214] Tran & Bhattarai, *supra* note 208, at 10.

[215] Title VI Guidance, *supra* note 211, at 47314.

[216] *Id.*

[217] *See id.*

[218] *Id.* at 47319.

[219] *Id.* (emphasis added).

[220] Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency, 79 Fed. Reg. 70771, 70782 (Nov. 28, 2014).

[221] *See* Tran & Bhattarai, *supra* note 208, at 12.

affirmative duty to interpret or translate information.[222] In *Hatten-Gonzales v. Scrase*, the plaintiff alleged that the New Mexico Human Services Department (HSD) was not complying with "SNAP and Medicaid regulations related to language access for limited English proficiency persons," and filed a Motion to Enforce Compliance.[223] The plaintiff argued that applications and notices for SNAP and Medicaid were only available in English and Spanish, and not in other languages widely spoken in New Mexico, such as Vietnamese, Chinese, Arabic, Dari/Farsi, Swahili, and Kinyarwanda.[224] They further argued that under the DOJ's guidance and the safe harbor rule, the HSD was in violation of Title VI and agency regulations when it did not provide additional document translation and interpretation services.[225] The court denied the plaintiff's motion with regard to the Title VI claim, explaining that "the Safe Harbor Rule does not impose an affirmative duty on Defendant to translate documents or provide interpretation services" and "DOJ guidance cannot be converted into a legal requirement."[226]

The court did, however, grant the plaintiff's motion with regard to Medicaid regulations.[227] Medicaid regulations require that "'[i]ndividuals must be informed of the availability of the accessible information and language services . . . and how to access such information and services, *at a minimum through providing taglines in non-English languages* indicating the availability of language services.'"[228] The Medicaid notices provided by the HSD were in English and Spanish but did not include taglines in any other languages.[229] Because there was a mandatory minimum action defined in the regulation, the court concluded that the HSD was not in compliance with the regulation and ordered it to provide non-English taglines to applicants requesting information about the Medicaid program.[230] This case demonstrates that more clearly articulated rules regarding language access, rather than voluntary compliance suggestions, could help the enforcement of language-access rights for non-English-speaking and LEP individuals. As a policy matter, creating "mandatory percentage[s] and numeric threshold[s] as evidence of noncompliance" at a lower level than the current safe harbor guidance would help get more vital, translated documents into the hands of LEP individuals when federal

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[222] Hatten-Gonzales v. Scarse, No. 88-0385, 2022 U.S. Dist. LEXIS 40229, at *56 (D.N.M. Mar. 1, 2022).

[223] *Id.* at *1–2.

[224] Plaintiff's Motion to Enforce Compliance with Decree to Translate Documents & Interpret as Required by Fed. L. at 6–7, Hatten-Gonzales v. Scarse, No. 88-0385, 2022 U.S. Dist. LEXIS 40229 (D.N.M. Mar. 1, 2022).

[225] *Id.* at 4–5; *see Hatten-Gonzales*, 2022 U.S. Dist. LEXIS 40229, at *2–3, *5–6.

[226] *Hatten-Gonzales*, 2022 U.S. Dist. LEXIS 40229, at *5–6.

[227] *Id.* at *2–3, *9.

[228] *Id.* at *6 (quoting 42 C.F.R. § 435.905(b)(3) (2025)).

[229] *Id.* at *6–7.

[230] *Id.* at *8–9.

funding recipients provide services.[231] However, recent executive orders may discourage agencies from expanding their LEP policies.

Executive Order 13166 was recently revoked by Executive Order 14224, in which President Trump designated English as the official language of the United States; without updated guidance, it is unknown how this administration will interpret the obligations of federal funding recipients to LEP persons.[232] Executive Order 14224 directs the Attorney General to "rescind any policy guidance documents issued pursuant to Executive Order 13166 and provide updated guidance, consistent with applicable law."[233] The DOJ has rescinded its previous LEP guidance, and unpublished it from the Civil Rights Division's website; it has yet to issue updated guidance, but has expressed that recipients of federal funding have "a continuing obligation to comply with Title VI, all applicable Title VI implementing regulations, all applicable federal civil rights laws and nondiscrimination provisions."[234] Once guidance is updated, HHS and other agencies will need to align their policies to the DOJ's updated interpretation of federal fund recipients' obligations.[235] Despite these developments, Executive Order 14224 states that "nothing in this order, however, requires or directs any change in the services provided by any agency"—so, for now, Title VI of the Civil Rights Act of 1964 and section 1557 of the Affordable Care Act are still good law.[236] The new paradigm toward LEP persons may have a chilling effect on individuals who require non-English resources to avail themselves of these programs, but discrimination based on national origin—and by proxy, English-language proficiency—remains illegal.[237]

Providing affordable, accessible care to the Marshallese and other COFA migrants in their language would create better health outcomes for these communities. The healthcare system in the United States is complicated enough

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[231] Tran & Bhattarai, *supra* note 208, at 14.

[232] Exec. Order No. 14224, 90 Fed. Reg. 11363, 11363 (Mar. 6, 2025).

[233] *Id.*

[234] U.S. Dep't of Just.: C.R. Div., Notice of Intent to Issue this Recission of Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Mar. 21, 2025), https://www.justice.gov/crt/media/1394191/dl?inline [https://perma.cc/N3KM-DNEJ].

[235] *See generally* Memorandum from the U.S. Att'y Gen. on Implementation of Executive Order No. 14224: Designating English as the Official Language of the United States of America to All Fed. Agencies (July 14, 2025), https://www.justice.gov/ag/media/1407776/dl [https://perma.cc/3ZNP-GRHD] (describing how agencies must implement Executive Order No. 14224).

[236] Exec. Order No. 14224, 90 Fed. Reg. at 11363.

[237] *See* Mara Youdelman, *Despite New Executive Order, Language Access is Still the Law!*, NAT'L HEALTH L. PROGRAM (Mar. 3, 2025), https://healthlaw.org/despite-new-executive-order-language-access-is-still-the-law/ [https://perma.cc/9XEH-M7TZ].

without the added barrier of not being able to comprehend recommendations or express one's needs. Moreover, some medical information—including diagnoses, conditions, and treatments—does not have a direct translation in Marshallese and must be explained in detail by interpreters.[238] After decades of being disenfranchised, harmed, and forgotten by the United States, Marshallese migrants deserve to understand the health and other social safety net programs that they were excluded from and receive the assistance for which they are now qualified. Yet, without increased awareness that COFA migrants are present in the United States, and without at least a basic understanding of their unique situation and history, there remains a danger that they will be forgotten again.

2. Increase Awareness of COFA Migrants

Federal agencies responsible for benefit programs must update their internal guidance to ensure that eligible COFA migrants can avail themselves of these services, and local, state and federal governments, agencies, and federal fund recipients should adhere to that guidance. Many agencies have already issued policy guidance and informational memoranda to this effect.[239] However, it is unclear whether compliance with the guidance is presently being implemented at the federal and state levels. Lawmakers' general unawareness about the COFA and their inability to correctly articulate COFA migrants' status in legislation is not only lazy, but, as demonstrated by COFA migrants' omission in the PRWORA, can cause actual harm to individuals.[240] Broad unawareness of the history of the United States' actions and the current agreement with the FAS continues to affect them to this day.[241]

At the highest level, there needs to be a greater understanding of the United States' relationship with the FAS to avoid drafting errors that would again cause harm, at worst, or administrative barriers, at best, to COFA migrants already burdened with socioeconomic difficulties navigating life in the United States. For example, the original text of the REAL ID Act of 2005 mistakenly referenced the "Trust Territory of the Pacific Islands," instead of the "Freely Associated States," when defining which documentation would be permissible for application for a REAL ID.[242] Although difficulty obtaining a REAL ID may seem like a trivial

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[238] Arielle Dreher, *Arkansas Medical Leaders Address Health Disparities for Marshallese Community*, SPOKESMAN-REV. (Mar. 19, 2023), http://spokesman.com/stories/2023/mar/19/arkansas-medical-leaders-address-health-disparitie/ [https://perma.cc/NNR4-KCY5].

[239] NAT'L IMMIGR. L. CTR., *supra* note 90, at 1.

[240] *See* discussion *supra* Section II.B.

[241] *See* discussion *supra* Part II.

[242] REAL ID Act of 2005, Pub. L. No 109-13, § 201, 119 Stat. 302, 312; *cf.* Designation of REAL ID Identity Documents for Citizens of the Freely Associated States, 84 Fed. Reg. 46556 (Sep. 4, 2019) (designating additional identity documents to obtain a REAL ID to include certain immigration and travel documents of COFA migrants).

matter, it created harms for COFA migrants. Some COFA migrants reportedly lost their employment because they were unable to obtain REAL ID-compliant identification necessary to enter facilities, such as military bases, where they worked.[243] As written, the Act made obtaining a REAL ID-compliant identification document an extremely burdensome undertaking for COFA migrants.[244]

Under the language of the REAL ID Act, if FAS citizens presented a valid, unexpired passport and their I-94, the only documentation necessary to be admitted into the United States, they would be unable to apply for a REAL ID because they were not citizens of the TTPI (which had been dissolved for over ten years at the time the REAL ID Act was passed).[245] While an Employment Authorization Document (EAD) is sufficient identification for REAL ID applications—and COFA migrants can obtain them under the COFA—individuals from the FAS admitted to the United States do not need to apply for, possess, or renew an EAD to work in the United States.[246] Application for an EAD would be another application with another government agency—a task that is no small endeavor, especially for LEP individuals.[247]

If a COFA migrant did not pursue an EAD, their REAL ID application was treated as being submitted by a lawfully admitted, nonimmigrant applicant with an indefinite period of authorized stay.[248] Under this treatment, applicants were only

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[243] U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 22, app. X at 99.

[244] *Id.* at 99–100.

[245] REAL ID Act of 2005 § 202; Designation of REAL ID Identity Documents for Citizens of the Freely Associated States, 84 Fed. Reg. at 46557; *Trust Territory of the Pacific Islands Archives: Introduction*, UNIV. HAW. MĀNOA: HAMILTON LIBR. (Feb. 4, 2026, at 13:04 PT), https://guides.library.manoa.hawaii.edu/tta [https://perma.cc/PPE3-SGEZ] (explaining that the last Trust Territory district "voted to end its trustee status in 1994); *see* H.R. REP. NO. 115-945, at 1–2 (2018) (explaining that amendments to the REAL ID Act were made "to ensure a FAS citizen admitted as a non-immigrant to the United States pursuant to a Compact of Free Association can obtain a REAL ID-compliant driver's license on the same basis as any other long-term migrant in the United States").

[246] *Fact Sheet: Status of Citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Sep. 2020), https://www.uscis.gov/sites/default/files/document/fact-sheets/FactSheetVerifyFASCitizens.pdf [https://perma.cc/WM6D-3Y5R].

[247] *See Status of Citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands Fact Sheet*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 24, 2025), https://www.uscis.gov/working-in-the-united-states/status-of-citizens-of-the-freely-associated-states-of-the-federated-states-of-micronesia-and-the?utm_source [https://perma.cc/WB58-E5PR] (explaining that Employment Authorization Documents (EADs) are issued by the U.S. Citizenship and Immigration Service (USCIS)); *How to Get a REAL ID and Use it for Travel*, USA.GOV (Nov. 13, 2025), https://www.usa.gov/real-id [https://perma.cc/CC3T-496S] (explaining that REAL IDs are issued by state DMV offices).

[248] Designation of REAL ID Identity Documents for Citizens of the Freely Associated States, 84 Fed. Reg. at 46557.

eligible for temporary REAL IDs, which are valid for only one year.[249] This was yet another administrative process that COFA migrants would have to contend with yearly if they were required to maintain REAL ID-compliant identification. Finally, depending on who was working at the office at the time a COFA migrant applied, a person might not even get the chance to submit their application.[250] COFA migrants have reported that employees of state government agencies did not understand their nonimmigrant status in the United States, or even understand that COFA migrants were eligible to apply for REAL ID-compliant identification at all, causing difficulty in even initiating the application process.[251] This example demonstrates how careless drafting due to ignorance about Micronesia created a host of downstream problems for COFA migrants.

While this error was rectified in December 2018 with the signing of the REAL ID Act Modification for Freely Associated States, which created a new category specifically for individuals admitted to the United States under the COFA, the correction of this language took 13 years.[252] This situation mirrors the drafting problem in the PRWORA—a problem that would have been avoided but for the drafters' unawareness.[253] Increased awareness of COFA migrants and their legal status in the United States would help to prevent these gaps and better protect them with more informed policies. Migrants from the FSM, the Republic of Belau, and the RMI have given their islands, tax dollars, labor, and, for some, their lives to the United States—they do not deserve to be forgotten.

CONCLUSION

The Marshallese use the term *je-jerā* when they describe the COFA.[254] The term, which roughly translates to "blood brothers," describes a friendship that is imbued with great respect and trust, but also mutual obligation.[255] The collective amnesia of the damage done to the people of the RMI that was ultimately caused by the United States' strategic ambitions in the Pacific seems rooted in our national consciousness, and it is past time that the United States begin to recognize, and reckon with, our obligations as the RMI's *je-jerā.* With the safety net for COFA migrants restored for now, the United States has perhaps finally pointed the ship back in the right direction. For the sake of those who were never able to return home, it is my hope that we never forget them again.

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[249] *Id.*

[250] U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 22, app. X at 99–100.

[251] *Id.*

[252] Designation of REAL ID Identity Documents for Citizens of the Freely Associated States, 84 Fed. Reg. at 46557.

[253] *See* discussion *supra* Section II.B.

[254] McElfish et al., *supra* note 152, at 10.

[255] *Id.*