

CIVIL RIGHTS AND PROTECTIONS

During the Federal Response to Hurricanes Harvey and María

2022 STATUTORY REPORT



Civil Rights and Protections During the Federal Response to Hurricanes Harvey and María

U.S. COMMISSION ON CIVIL RIGHTS

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- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
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Civil Rights and Protections During the Federal Response to Hurricanes Harvey and María

U.S. Commission on Civil Rights
2022 Statutory Enforcement Report

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UNITED STATES COMMISSION ON CIVIL RIGHTS

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Letter of Transmittal

September 21, 2022

President Joseph R. Biden
Vice President Kamala Harris
Speaker of the House Nancy Pelosi,

On behalf of the United States Commission on Civil Rights (“the Commission”), I am pleased to transmit our annual statutory enforcement report, *Civil Rights and Protections During the Federal Response to Hurricanes Harvey and María*. The report is also available in full on the Commission’s website at www.usccr.gov.

This report examines the Federal Emergency Management Agency’s (FEMA) compliance with federal civil rights laws and policies in connection with responses in Texas and Puerto Rico following Hurricanes Harvey and María. Additionally, the analysis showed a comparison of federal responses to the two disasters. The Commission has not previously assessed the civil rights implications of disaster response in its 65 years of existence. As part of the examination, the Commission held three briefings, with testimony from federal officials such as FEMA’s Office of Response and Recovery, Inspectors General from the Department of Homeland Security and the Department of Housing and Urban Development, the President of the Emergency Management Association of Texas, the Texas General Land Office, the Secretary of State of Puerto Rico, and the former Mayor of San Juan, Puerto Rico. The Commission also heard from advocacy leaders, legal experts, and researchers in the field, and met with severely impacted community groups and stakeholders (*see Appendices A-C for full panelist lists and briefing transcripts*).

This report examines many factors, such as barriers to providing aid, FEMA’s coordinating role in disaster recovery efforts, consideration of local factors impacting damage assessments and delivering resources, and efforts by federal agencies to comply with the Stafford Act and other civil rights obligations. In addition to FEMA, the report also assesses aid provided by the

Department of Housing and Urban Development and the Small Business Administration for compliance with federal civil rights law and policy.

Across all Commission briefings, experts testified that there was a need for transparent and clear guidelines to apply for aid, additionally panelists recommended a more streamlined portal for the intake of all federal disaster assistance that would make the application experience less stressful and repetitive. Experts urged that such a cross sharing platform would expedite survivor data and information sharing across all responding agencies on the federal, state, and local level based on FEMA's needs assessment at the first point of entry. The Commission also heard from survivors and experts who testified that the lack of electricity and internet had significant impacts on their ability to access assistance and federal relief programs. The aid application process was complicated by the lack of electricity and internet access. This was especially true in Puerto Rico, where rolling power outages affect significant portions of the Island over four years later. Panelists suggested the federal government should adopt a flexible policy to provide aid to those in need, including providing access to technology to address the digital divide, and adopting a paper application process when survivors are without electricity or telecommunications access.

Language access was also a significant issue for survivors of both storms. After Harvey, there were many instances of information about shelter locations being provided only in English. In Puerto Rico, FEMA did not have enough Spanish-speaking employees to accommodate the Island, leading to delays in aid and assistance. Even after documents had been translated into Spanish, they were often inaccurate and confusing. Additionally, sign linguists sent to Puerto Rico often only knew ASL - English, rather than the Spanish variant used generally through the island. Witnesses and panelists consistently testified that Spanish-speaking Puerto Ricans received disproportionately lower amounts of assistance for María recovery than English-speaking mainland Americans received. Given that Puerto Rico's residents are almost entirely Latinx, the territory's official languages include Spanish, and many Puerto Ricans speak limited English. Testimony shows that FEMA's lower levels of assistance to María survivors failed to comply with the principles underlying Title VI and 44 CFR § 7.5, which prohibits disparate treatment based on race, national origin, and linguistic characteristics in clear violation of federal court precedent and EEOC Guidance.

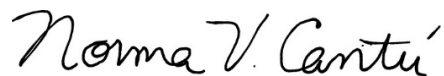
Many disaster survivors also recommended the need for increased collaboration across federal agencies, local governments, and aid organizations. Disaster recovery experts assert that this type of public engagement with stakeholders should begin with emergency planning and response and continue through the closeout of recovery and mitigation programs. The suggestion to focus on local collaboration included that hiring efforts of disaster relief contractors also be a local effort. Relying on out-of-town contractors creates missed opportunities to provide employment, job training, and contracting opportunities to low-income local workers and small- and minority-

controlled businesses, which are often in severe need of work due to the disruption to local business following a disaster.

Finally, it was recommended that the recovery and mitigation process should focus on survivors with the greatest needs, particularly people of color, low-income people, people with disabilities, immigrants, LGBTQ communities, and other marginalized individuals, to provide sufficient staff fluent in the various languages found in the affected areas (in Puerto Rico, it was particularly focused on Spanish). Additionally, FEMA should provide disability training to all shelter personnel and provide American Sign Language (ASL). Experts also stressed the need for FEMA to increase the cultural competency of existing staff and management.

We at the Commission are pleased to share our views, informed by careful research and investigation as well as civil rights expertise, to help ensure that all Americans enjoy civil rights protections to which we are entitled.

For the Commission,

A handwritten signature in black ink that reads "Norma V. Cantu". The signature is written in a cursive, flowing style.

Norma V. Cantu

Chair

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The Texas State Advisory Committee to the U.S. Commission on Civil Rights also collected and provided testimony on related civil rights issues within their respective jurisdictions.

*Employee is no longer with the Commission at the time of publication.

Executive Summary

In March 2021, the U.S. Commission on Civil Rights (USCCR) voted to examine the Federal Emergency Management Agency's (FEMA) compliance with federal civil rights laws and policies in connection with responses in Texas and Puerto Rico following Hurricanes Harvey and María. Additionally, the examination includes a comparison of federal responses to the two disasters.

The USCCR has not previously examined the civil rights implications of disaster response in its 65 years of existence. As part of the investigation, the Commission held three briefings and met with community groups and stakeholders. The first briefing was held virtually on June 25, 2021. Eleven panelists testified, including federal officials from FEMA's Office of Response and Recovery, FEMA's Office of Equal Rights, the Director of Homeland Security and Justice at the Government Accountability Office, and Inspectors General from the Department of Homeland Security and the Department of Housing and Urban Development. The Commission also heard from advocacy leaders and researchers in the field.

The Commission held two subsequent field briefings: one virtual and one in-person. The virtual briefing was held on October 21, 2021, focusing on the response to Hurricane Harvey in Texas, where the Commission collected testimony from the President of the Emergency Management Association of Texas, the Texas General Land Office, as well as community leaders, researchers, and legal experts in the field.

The in-person briefing was held on December 10, 2021, in San Juan, Puerto Rico, focusing on the response to Hurricane María, where the Secretary of State of Puerto Rico, the former Mayor of San Juan, community leaders, researchers and legal experts provided testimony (see Appendices A-C for full panelist lists and briefing transcripts).

Additionally, while in Puerto Rico, the Commission visited two communities that were severely damaged during María –Caño Martín Peña and Loíza – to hear first-hand accounts from disaster survivors about the response and recovery efforts.¹ To further inform the report, the Commission staff also sought information through a variety of sources (e.g., document requests, empirical research, briefing testimony, and formal and informal outreach to government officials, scholars, and community stakeholders) to investigate the federal government's response to the original and ongoing impact of Hurricanes Harvey in Texas and María in Puerto Rico.

This report examines many factors, such as barriers to providing aid, FEMA's coordinating role in disaster recovery efforts including local factors impacting damage assessments and delivering

¹ See, *infra* notes 1501-1571.

resources, and efforts by federal agencies to comply with the Stafford Act and other civil rights obligations. In addition to FEMA, the report also assesses aid provided by the Department of Housing and Urban Development and the Small Business Administration for compliance with federal civil rights law and policy.

After a disaster occurs, FEMA is responsible for coordinating the federal government’s role in preparing for, preventing, mitigating the effects of, responding to, and recovering from all domestic disasters, whether natural or man-made, including acts of terror.² This is a highly complex effort requiring coordination among multiple organizations at many stages of disaster preparedness, management, response, and recovery. Currently, there are at least 17 federal agencies, including FEMA, that provide disaster assistance and aid to individual residents, states, territories, Indian tribes, and local governments.³

All disasters impact residents and their communities, but not all disasters require a federal response. When a disaster is widespread and damaging enough to require a federal response, FEMA receives a presidential charge to execute major disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Act of 1988 (Stafford Act).⁴ After a disaster occurs, the Governor of a state or territory may request a Presidential-disaster declaration that activates an array of federal programs to assist state and local officials in the response and recovery effort.⁵ Section 308 of the Stafford Act, as amended, includes provisions for ensuring that the distribution of supplies, the processing of applications, and other relief assistance activities are accomplished equitably and impartially without discrimination on the basis of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.⁶

In the days following a disaster, there is an expectation that the federal government, along with state and local governments, will come to the aid of affected residents. There is also the expectation that assistance will be prompt and ameliorate any unnecessary suffering. As in all government services, there is also a need to ensure fairness and equality.

² Federal Emergency Management Agency (herein FEMA), “About the Agency,” <https://www.fema.gov/about>.

³ The 17 agencies are: Dep’t of Agriculture, Dep’t of Commerce, Dep’t of Defense, Dep’t of Education, Dep’t of Energy, Dep’t of Health and Human Services, Dep’t of Homeland Security, Dep’t of Housing and Urban Development, Dep’t of the Interior, Dep’t of Justice, Dep’t of Labor, Dep’t of Transportation, Dep’t of the Treasury, Dep’t of Veterans Affairs, Environmental Protection Agency, General Services Administration, and Small Business Administration.

See, e.g., Colin Foard, “Federal Disaster Assistance Goes Beyond FEMA,” Sept. 2017, https://www.pewtrusts.org/-/media/assets/2017/09/federal-disaster-goes-beyond-fema_final.pdf; U.S. Government Accountability Office (herein GAO), *Federal Disaster Assistance: Federal Departments and Agencies Obligated at Least \$277.6 Billion during Fiscal Years 2005 through 2014*, Sept. 2016, <https://www.gao.gov/assets/gao-16-797.pdf>.

⁴ Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, 88 Stat. 143, (codified as 42 U.S.C. § 5121 *et seq.*)

⁵ 42 U.S.C. § 5170(a).

⁶ Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and Related Authorities § 308(a); 42 U.S.C. § 5151.

Natural disasters are often thought of as “leveling agents” that affect all individuals equally; however, research has shown that disasters can exacerbate existing disparities and have more lasting impacts on communities that were disadvantaged prior to the disaster. For example, individuals of low socioeconomic status are more likely to live in housing and areas that are more vulnerable to disasters, and may face higher physical and health risks.⁷ Research has also found that natural disasters can lead to an increase in the racial wealth gap,⁸ and contribute to an increase in poverty, housing and food insecurity, and other negative outcomes.⁹ Additionally, damage assessments are based on property ownership, which tends to concentrate federal resources on the wealthier parts of a community and disadvantages renters and the unhoused.¹⁰

In 2017, there were an unprecedented number of requests for federal assistance,¹¹ with the President declaring 57 major disaster declarations under the Stafford Act because of a series of hurricanes and wildfires.¹² Hurricane Harvey was the most significant tropical cyclone rainfall event in the country in terms of scope and peak rainfall amounts, and was responsible for at least 68 deaths in Texas.¹³ Damage caused by flooding during and after Harvey was catastrophic – over 300,000 structures in the region were flooded, with up to 500,000 cars flooded as well,¹⁴ and 780,000 survivors were forced from their homes.¹⁵ Loss of utilities was also widespread, with a peak of 338,000 electric customer outages reported across the impacted areas.¹⁶ Sixty-one public-water systems and 40 wastewater-treatment facilities were rendered inoperable or destroyed at the height of the storm, and more than 200 public-water systems had to issue boil-

⁷ Hallegatte, S., Vogt-Schilb, A., Rozenberg, J. et al. “From Poverty to Disaster and Back: A Review of the Literature,” *Economics of Disasters and Climate Change*, 4(223–247), April 2020, <https://link.springer.com/article/10.1007/s41885-020-00060-5>; Substance Abuse and Mental Health Services Administration, *Greater Impact: How Disasters Affect People of Low Socioeconomic Status*, July 2017, https://www.samhsa.gov/sites/default/files/dtac/srb-low-ses_2.pdf;

Tricia Wachtendorf, Director of the Disaster Research Center, University of Delaware, *Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas Briefing Before the U.S. Comm’n on Civil Rights*, Oct. 21, 2021, transcript, pp. 21-27 (hereinafter cited as *Texas Briefing*); ; see also FEMA, *National Advisory Council November 2020 Report to the Administrator*, Nov. 30, 2020, p. 12, https://www.fema.gov/sites/default/files/documents/fema_nac-report_11-2020.pdf.

⁸ Junia Howell and James Elliott, “Damages Done: The Longitudinal Impacts of Natural Hazards on Wealth Inequality in the United States,” *Social Problems*, vol. 66, no. 3, Aug. 2019, <https://academic.oup.com/socpro/article/66/3/448/5074453?login=true>.

⁹ FEMA, *National Advisory Council November 2020 Report to the Administrator*, Nov. 30, 2020, p. 12, https://www.fema.gov/sites/default/files/documents/fema_nac-report_11-2020.pdf.

¹⁰ Ibid.

¹¹ See, e.g., William Painter, *2017 Disaster Supplemental Appropriations: Overview*, Congressional Research Service, Mar. 20, 2018, <https://sgp.fas.org/crs/homesecc/R45084.pdf>.

¹² Ibid.

¹³ National Oceanic and Atmospheric Administration (herein NOAA), *Hurricane Harvey*, May 9, 2018, https://www.nhc.noaa.gov/data/tcr/AL092017_Harvey.pdf, p. 8.

¹⁴ Ibid.

¹⁵ FEMA, *2017 Hurricane Season FEMA After-Action Report*, Jul. 12, 2018, https://www.fema.gov/sites/default/files/2020-08/fema_hurricane-season-after-action-report_2017.pdf, p. 1.

¹⁶ North American Electric Reliability Corporation, *Hurricane Harvey Event Analysis Report*, Mar. 2018, https://www.nerc.com/pa/rrm/ea/Hurricane_Harvey_EAR_DL/NERC_Hurricane_Harvey_EAR_20180309.pdf.

water notices.¹⁷ Several months later more than 3,700 people across southeast Texas still did not have clean drinking water.¹⁸

Just a few weeks following Harvey, Hurricane María affected every resident in Puerto Rico, and the Puerto Rican government had declared María's official death toll at 2,975.¹⁹ María hit more than 786,000 homes,²⁰ knocking down 80 percent of Puerto Rico's utility poles and all of its transmission lines.²¹ The immediate aftermath included 100 percent of the power grid, 95 percent of cellular sites and 43 percent of wastewater treatment plants being rendered inoperable, and more than 97 percent of roads were impassable.²²

The disaster relief and response efforts to the storms differed on many fronts. From landfall through six months after, the disaster response to Harvey in Texas was on a larger scale and faster than the response to María in Puerto Rico,²³ and the Commission received testimony that the slow pace at which federal agencies dispersed aid to Puerto Rico significantly affected survivors' recovery.²⁴ On the ground response in Puerto Rico was particularly complicated due to its geographic location and its infrastructure.²⁵ After María made landfall, every airport and port was closed, most of the population were left without cell phone access, and the main Island was without electricity.²⁶ Nine days after each of these respective storms, FEMA approved \$141.8 million for individual assistance to Harvey victims, while it approved \$6.2 million for

¹⁷ Texas Commission on Environmental Quality, *Hurricane Harvey Response 2017, After Action Review Report*, Apr. 3, 2018, <https://www.tceq.texas.gov/assets/public/response/hurricanes/hurricane-harvey-after-action-review-report.pdf>, p.2.

¹⁸ Associated Press, "Harvey leaves thousands still waiting on clean water," *Fox News*, Dec. 4, 2017, <https://www.foxnews.com/us/harvey-leaves-thousands-still-waiting-on-clean-water>.

¹⁹ Meredith Roaten, "Public health researchers report 3,000 deaths in Puerto Rico after Hurricane María," *GW Hatchet*, Aug. 28, 2018, <https://www.gwhatchet.com/2018/08/28/public-health-researchers-report-3000-deaths-in-puerto-rico-after-hurricane-maria/>.

²⁰ Danica Coto, "Thousands in Puerto Rico still without housing since María," *AP News*, Jul. 24, 2020, <https://apnews.com/article/ap-top-news-puerto-rico-latin-america-caribbean-hurricanes-a2cf35e2f8893592ec4b59d90baae1ac>.

²¹ NOAA, *Hurricane María*, Feb. 14, 2019, https://www.nhc.noaa.gov/data/tcr/AL152017_Maria.pdf, p. 7.

²² RAND Corporation, *Hurricanes Irma and María: Impact and Aftermath*, <https://www.rand.org/hsrd/hsoac/projects/puerto-rico-recovery/hurricanes-irma-and-maria.html> (last accessed May 4, 2022).

²³ Charley E. Willison, Phillip M. Singer, Melissa S. Creary, and Scott L. Greer, "Quantifying inequities in US federal response to hurricane disaster in Texas and Florida compared with Puerto Rico," *BMJ Global Health*, 4(1): 2019, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6350743/>.

²⁴ Adi Martínez-Román, Director, UPR Resiliency Law Center of the University of Puerto Rico Law School, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm'n on Civil Rights, Dec. 10, 2021, at 7.

²⁵ David Bibo, Acting Associate Administrator for Office of Response and Recovery, Jo Linda Johnson, Director, Office of Equal Rights, Tony Robinson, Region 6 Administrator, Federal Emergency Management Agency, Joint Written Statement for the *Civil Rights and Protections in the Federal Response to Hurricanes María and Harvey Briefing Before the U.S. Comm'n on Civil Rights*, Jun. 25, 2021, at 7 (herein Joint FEMA Statement).

²⁶ *Ibid.*

victims of María,²⁷ leading to some news outlets to question the federal government's differing response to the storms.²⁸ Survivors of Harvey received \$1.28 billion in aid within two months after landfall, while María survivors waited four months before receiving \$1 billion in aid after landfall.²⁹

Data show that María was a stronger storm that resulted in more damage to Puerto Rico than Harvey did to Texas, as measured by loss of electricity and housing, with overall damage estimates comparable to Harvey.³⁰ A panelist provided testimony indicating that “assuming that infrastructure costs are higher in Texas... and therefore more expensive to repair, compared to Puerto Rico, the high damage estimates in Puerto Rico emphasized the severity of the storm damage.”³¹ Additionally in Puerto Rico, contracted companies were sometimes unable to complete the work they were hired for. For example, one program intended to make homes more habitable³² did not begin until five months after the hurricane and received more than 11,000 complaints from participants, housing advocates, and even the program's own subcontractors.³³ Moreover, many of the repairs were poorly executed, incomplete, and had to be redone by nonprofit groups and others.³⁴

One reason aid was available to Harvey survivors faster is that FEMA had already pre-positioned supplies and personnel in Texas in preparation for the storm.³⁵ In Puerto Rico, FEMA indicated that they “essentially served as the first responder in the early response efforts in Puerto Rico,” and provided many services “typically provided by territorial or local governments.”³⁶ FEMA wrote in its 2017 Hurricane Season After-Action Report that the agency generally coordinates

²⁷ Willison et al., “Quantifying inequities in US federal response to hurricane disaster in Texas and Florida compared with Puerto Rico.”

²⁸ See Ankur Banerjee, “U.S. hurricane response slower in Puerto Rico than in Florida, Texas: study,” *Reuters*, Feb. 5, 2019, <https://www.reuters.com/article/us-health-disasters-puerto-rico/u-s-hurricane-response-slower-in-puerto-rico-than-in-florida-texas-study-idUSKCN1PU1YU>; see also Eric Levenson, “3 storms, 3 responses: Comparing Harvey, Irma and María,” *CNN*, Sept. 27, 2017, <https://www.cnn.com/2017/09/26/us/response-harvey-irma-maria/index.html>.

²⁹ See, *infra* note 1190.

³⁰ Charley Willison, Postdoctoral Fellow, Harvard Medical School, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights and Protections Following a Natural Disaster Briefing before the U.S. Comm'n on Civil Rights, Jun. 25, 2021, at 2 (herein Willison Statement).

³¹ *Ibid.*

³² Frances Robles, “\$3,700 Generators and \$666 Sinks: FEMA Contractors Charged Steep Markups on Puerto Rico Repairs,” *The New York Times*, Nov. 26, 2018, <https://www.nytimes.com/2018/11/26/us/fema-puerto-rico-housing-repairs-maria.html>.

³³ Charlotte Gossett Navarro, Puerto Rico Chief Director, Hispanic Federation, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm'n on Civil Rights, Dec. 10, 2021, at 11 (herein Navarro Statement).

³⁴ *Ibid.*

³⁵ FEMA, “Historic Disaster Response to Hurricane Harvey in Texas,” Sept. 22, 2017, <https://www.fema.gov/press-release/20210318/historic-disaster-response-hurricane-harvey-texas>; Willison et al., “Quantifying inequities in US federal response to hurricane disaster in Texas and Florida compared with Puerto Rico”; RAND, *Hurricanes Irma and María: Impact and Aftermath*.

³⁶ Joint FEMA Statement, at 10-11.

with state and local governments to manage commodity distribution, but since Puerto Rico “did not have the same level of preparedness to manage a commodity distribution mission,” FEMA took a more direct role in distribution than it usually does following a disaster.³⁷ The Commission’s investigation found that a common theme shared by experts and impacted individuals from both hurricanes was the reliance on the expertise of community organizations to augment or supplant government assistance. Moreover, while these grassroots organizations have the potential to improve outcomes, the opportunity was not seized to its full extent.³⁸

Across both storms, there were many hurdles and impediments for survivors to navigate. For instance, following both Harvey and María, the application and appeals process proved to be formidable. A survey of Harvey survivors found that more than half of respondents were not receiving the help they needed to recover from the storm, and many residents who were denied assistance were not told the reason for their denials or given information on how to re-apply.³⁹ The Commission heard that individuals with disabilities encountered various barriers trying to apply for assistance with FEMA,⁴⁰ and following Harvey, there was an increased number of persons with disabilities who had lived in the community prior to the storm being transferred to institutional settings.⁴¹

Language access was also a significant issue for survivors of both storms. For example, it was alleged that after Harvey, information announcing shelter locations was only available in English;⁴² and in Puerto Rico, FEMA did not have enough Spanish-speaking employees to accommodate the Island, leading to delays in aid and assistance.⁴³ The Commission also received testimony that even after documents had been translated into Spanish, they were often inaccurate and confusing.⁴⁴

³⁷ FEMA, *2017 Hurricane Season After-Action Report*, at 29.

³⁸ Ben Hirsch, Co-Director, West Street Recovery, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas Briefing before the U.S. Comm’n on Civil Rights, Oct. 21, 2021, at 1 (herein Hirsch Statement).

³⁹ Liz Hamel, Bryan Wu, Mollyann Brodie, Shao-Chee Sim, and Elena Marks, “An Early Assessment of Hurricane Harvey’s Impact on Vulnerable Texans in the Gulf Coast Region,” *Kaiser Family Foundation/Episcopal Health Foundation*, Dec. 2017, p. 11, <https://files.kff.org/attachment/Report-An-Early-Assessment-of-Hurricane-Harveys-Impact-on-Vulnerable-Texans-in-the-Gulf>.

⁴⁰ Marcie Roth, June Isaacson Kailes, and Melissa Marshall, “Getting It Wrong: An Indictment with a Blueprint for Getting It Right,” *The Partnership For Inclusive Disaster Strategies*, May 2018, p. 125, https://disasterstrategies.org/wp-content/uploads/2018/08/5-23-18_After_Action_Report_-_May_2018.pdf.

⁴¹ National Council on Disability, *Preserving Our Freedom: Ending Institutionalization of People with Disabilities During and After Disasters*, May 24, 2019, p. 10, <https://ncd.gov/publications/2019/preserving-our-freedom>.

⁴² Chrishelle Palay, Coalition Director, Houston Organizing Movement for Equity Coalition, Briefing Testimony before the Texas State Advisory Committee to the U.S. Commission on Civil Rights, Sept. 20, 2020.

⁴³ GAO, *2017 Hurricanes and Wildfires: Initial Observations on the Federal Response and Key Recovery Challenges*, Sept. 2018, p. 37, <https://www.gao.gov/assets/gao-18-472.pdf>.

⁴⁴ Diane Yentel, President and CEO, National Low Income Housing Coalition, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm’n on Civil Rights, Dec. 10, 2021, at 5 (herein Yentel Statement).

In the immediate aftermath, FEMA received over 1.1 million applications for individual housing assistance in Puerto Rico and had denied nearly 60 percent of those applications.⁴⁵ According to testimony collected by the Commission, experts asserted that many of these denials were due to issues of providing proof of homeownership or occupancy. In Puerto Rico, it is estimated that as many as 55 percent of homeowners did not hold a title at the time of Hurricane María,⁴⁶ and at least 77,000 applicants were denied FEMA assistance due to title documentation issues.⁴⁷ These denials were based on FEMA's interpretation of a Stafford Act requirement that assistance be limited to "owner-occupied" residences;⁴⁸ however, nothing in Puerto Rico's laws or regulations require homeowners to register their properties.⁴⁹ Similarly, following Harvey, survivors were also denied housing assistance due to the state of their formal heirship rights reasons, and many did not have the resources to secure the legal assistance needed to go through probate court or create wills needed to have single person ownership.⁵⁰ Following the work of many community advocates,⁵¹ in September 2021, FEMA adapted its policies to make it easier for disaster survivors to prove ownership and occupancy of damaged primary residences.⁵²

Across all Commission briefings, experts agreed that there was a need for clearer guidelines to apply for aid,⁵³ and that FEMA should avoid inflexible requirements and rigid interpretations of rules.⁵⁴ Some experts suggested that the agency should implement a "one-stop shop" portal for the intake of all federal disaster assistance that would make the application experience less stressful and repetitive for survivors.⁵⁵ Additionally, FEMA needs assessment should be the main point of entry for the disaster recovery process, with data sharing across all responding

⁴⁵ Ariadna Michelle Godreau Aubert, Executive Director, Ayuda Legal Puerto Rico (ALPR), Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm'n on Civil Rights, Dec. 10, 2021, at 4. (herein Aubert Statement)

⁴⁶ RAND Corporation, *After Hurricane María: Predisaster Conditions, Hurricane Damage, and Recovery Needs in Puerto Rico*, 2020, p. 241, https://www.rand.org/pubs/research_reports/RR2595.html.

⁴⁷ Yentel Statement, at 6; *see also* Aubert Statement, at 9.

⁴⁸ 42 U.S.C. 5174(c)(2)(A)(1).

⁴⁹ Aubert Statement, at 4.

⁵⁰ Hirsch Statement, at 3.

⁵¹ Aubert Statement, at 10; Yentel Statement, at 6-7.

⁵² FEMA, "How to Document Home Ownership and Occupancy for FEMA," Sept. 20, 2021,

<https://www.fema.gov/press-release/20210920/how-document-home-ownership-and-occupancy-fema>.

⁵³ Carmen Yulin Cruz Soto, Weissman Fellow in Leadership, Mount Holyoke College, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm'n on Civil Rights, Dec. 10, 2021, at 7 (herein Cruz Soto Statement).

⁵⁴ Amaris Torres Rivera, Executive Director, Fundación Fondo de Acceso a la Justicia, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm'n on Civil Rights, Dec. 10, 2021, Attachment 4, at 2 (herein Rivera Statement); Yentel Statement, at 6.

⁵⁵ Francisco Sánchez, President, Emergency Management Association of Texas, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas Briefing before the U.S. Comm'n on Civil Rights, Oct. 21, 2021, at 3 (herein Sánchez Statement); FEMA, *FEMA Request for Information Summary Report*, Aug. 2021, https://www.fema.gov/sites/default/files/documents/fema_rfi-summary-report_climate-change-and-equity_20210813.pdf.

federal, state, and local agencies.⁵⁶ Panelists suggested that aid programs could have broad categories of eligibility to match all survivors requiring aid with the assistance they need,⁵⁷ and cost estimating guidance could be improved to enhance reliability.⁵⁸

The Commission also heard from survivors and experts who testified that the lack of electricity and internet had significant impacts on their ability to access assistance and federal relief programs.⁵⁹ Following a natural disaster, the federal government should be flexible in providing aid to those in need, including providing access to technology to address the digital divide,⁶⁰ and adopting a paper application process when survivors are without electricity or telecommunications access.⁶¹

Many survivors also recommended the need for increased collaboration across federal agencies, local governments, and aid organizations. Coordination across federal agencies⁶² and partnering with local organizations could decrease barriers to accessing vital services, streamline the recovery effort, and enable resource sharing to combat post-disaster shortages.⁶³ Disaster recovery experts assert that this type of public engagement with stakeholders should begin with emergency planning and response, and continue through the closeout of recovery and mitigation programs.⁶⁴ It was also strongly suggested that when hiring contractors, the search should begin by looking at local options. Relying on out-of-town contractors creates missed opportunities to provide employment, job training, and contracting opportunities to low-income local workers and small- and minority-controlled businesses, which are often in severe need of work due to the disruption to local business following a disaster.⁶⁵

To combat housing issues following a disaster, codifying a HUD block grant program was recommended to streamline positive outcomes,⁶⁶ as the current process requires many tedious

⁵⁶ Julia Orduña, Southeast Regional Director, Texas Housers, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas Briefing before the U.S. Comm'n on Civil Rights, October 21, 2021, at 1.

⁵⁷ Yentel Statement, at 12.

⁵⁸ GAO, *Puerto Rico Disaster Recovery: FEMA Actions Needed to Strengthen Project Cost Estimation and Awareness of Program*, <https://www.gao.gov/assets/files/gao.gov/assets/gao-20-221-highlights.pdf>

⁵⁹ See, *infra* notes 1118, 1777-1778.

⁶⁰ Sánchez Statement, at 6.

⁶¹ Aubert Statement, at 8-9.

⁶² Veronica Chapa Gorczyński, testimony, *Texas Briefing*, p. 82

⁶³ Ever Padilla-Ruiz, Executive Director, Comisión de Derechos Civiles, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm'n on Civil Rights, Dec. 10, 2021, at 6 (herein Padilla-Ruiz Statement).

⁶⁴ Yentel Statement, at 10.

⁶⁵ *Ibid*, at 11; see also Navarro Statement, at 20.

⁶⁶ Texas General Land Office (GLO), Written Statement to the *Texas Advisory Committee to the U.S. Commission on Civil Rights*, Jan. 15, 2021, at 1 [on file].

steps that can create significant delays in distributing funds.⁶⁷ Additionally, it was recommended that following the changes FEMA made to its occupancy verification standards in September 2021, Puerto Rico disaster survivors previously denied assistance should be provided the opportunity to reopen their cases.⁶⁸

Experts found that there was inconsistent reporting of the amount of funding obligated in total across FEMA programs,⁶⁹ and in its response to Harvey and María, the agency was not authorized to collect information on race, ethnicity, or gender from those registering for assistance.⁷⁰ Experts also testified that disaster aid recovery efforts would benefit from greater data transparency, making data regarding race, gender, disability, age, and other demographic information for relief recipients public to ensure recovery efforts are equitable,⁷¹ and allow for greater recognition of gaps in services and need for reform.⁷²

Finally, it was recommended that the recovery and mitigation process should focus on survivors with the greatest needs, particularly people of color, low-income people, people with disabilities, immigrants, LGBTQ communities, and other marginalized individuals.⁷³ The Commission also received a recommendation that FEMA should hire and train a sufficient number of staff fluent in Spanish across all levels of the agency and ensure applications for all assistance programs are available in Spanish and can be submitted in Spanish.⁷⁴ Additionally, FEMA should provide disability training to all shelter personnel,⁷⁵ and provide American Sign Language (ASL) as well as Puerto Rican Spanish ASL translations in all videos.⁷⁶ Experts also stressed the need for

⁶⁷ U.S. Dep't of Housing and Urban Development, Office of Inspector General (herein HUD OIG), *Review of HUD's Disbursement of Grant Funds Appropriated for Disaster Recovery and Mitigation Activities in Puerto Rico*, Apr. 21, 2021,

https://www.hudoig.gov/sites/default/files/202104/HUD%20OIG%20Final%20Report_2019SU008945I.pdf

⁶⁸ Yentel Statement, at 7.

⁶⁹ *See, infra* notes 926-.

⁷⁰ FEMA Response to USCCR Interrogatories, p. 19 [on file]. FEMA is currently working with the Office of Management and Budget (OMB) and the Department of Homeland Security (DHS) to add demographic questions to the registration intake (application for assistance) process, which will provide the agency with more information to adjudicate any potential issues.

Ibid., at 19-20.

⁷¹ Aubert Statement, at 16-17; Navarro Statement at 14; Yarimar Bonilla, Director, Center for Puerto Rican Studies at Hunter College, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm'n on Civil Rights, Dec. 10, 2021, at 1 (herein Bonilla Statement).

⁷² Yentel Statement, at 10; Rivera Statement, at 5; Navarro Statement, at 21; Martínez-Román Statement, at 11.

⁷³ Yentel Statement, at 2.

⁷⁴ Navarro Statement, at 19.

⁷⁵ OFF. FOR C.R. AND C.L., DEP'T OF HOMELAND SEC., LISTENING SESSION RECAP, HOUSTON, TEXAS 8 (Feb. 1, 2018), p. 8, https://www.dhs.gov/sites/default/files/publications/Listening%20Session%20Recap_Houston_0.pdf (herein *Houston Recap*).

⁷⁶ Rivera Statement, Attachment #4, at 3.

FEMA to increase the cultural competency of existing staff and management through its trainings and programs.⁷⁷

This report is divided into four chapters. Chapter 1 focuses on the impacts of Hurricanes María and Harvey, potential civil rights implications regarding federal responses to natural disasters, and how the storms impacted various demographic populations. Chapter 2 addresses FEMA's role and obligations to ensure that the agency treats all disaster survivors equitably, and the role of coordinating aid with state, local, and territorial governments, and nongovernmental organizations. Chapter 2 also examines civil rights concerns regarding disaster aid. Next, Chapter 3 provides an in-depth analysis of the federal responses to Hurricanes Harvey and María. This chapter also provides a comparative look at the responses to each storm, analyzes additional challenges FEMA faced working with other federal agencies and with state and local officials in allocating and distributing aid, and discusses compliance efforts with the Stafford Act. Finally, Chapter 4 identifies potential civil rights issues associated with disaster recovery efforts and developing practices to address them. Several experts, stakeholders, and survivors provided recommendations following the briefings, which are also included in Chapter 4.

⁷⁷ FEMA, *National Advisory Council Report to the Administrator*, November 2020, https://www.fema.gov/sites/default/files/documents/fema_nac-report_11-2020.pdf.

Chapter 1: Introduction

Natural disasters such as hurricanes can have devastating impacts on communities. The National Oceanic and Atmospheric Administration (NOAA) defined the 2017 season as “extremely active,” producing seventeen named storms, six of which became major hurricanes (i.e., Category 3, 4, or 5).⁷⁸ Two significant disasters that year were Hurricane Harvey (Harvey), which made landfall in southeast Texas, and Hurricane María (María), which made landfall in Puerto Rico. Harvey was responsible for at least 68 direct deaths⁷⁹ and at least 103 deaths as a direct or indirect result of the storm.⁸⁰ María affected every resident in Puerto Rico, with an official death toll of 2,975.⁸¹

FEMA, housed within the Department of Homeland Security (DHS), is the primary coordinating federal agency for all natural disasters.⁸² FEMA is responsible for coordinating the activation and implementation of a response plan, and working with states to access federal funds,⁸³ while ensuring relief assistance is accomplished in an equitable and impartial manner.⁸⁴ This chapter provides an overview of Hurricanes Harvey and María, followed by an overview of potential civil rights issues involved in the federal response to the storms. It concludes with an evaluation of applicable civil rights protections, including the Stafford Act, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Rehabilitation Act, and the Fair Housing Act.

⁷⁸ NOAA, “Extremely active 2017 Atlantic hurricane season finally ends,” Nov. 30, 2017, <https://www.noaa.gov/media-release/extremely-active-2017-atlantic-hurricane-season-finally-ends>.

⁷⁹ According to NOAA, deaths occurring as a direct result of the forces of the tropical cyclone are referred to as “direct” deaths. These would include those persons who drowned in storm surge, rough seas, rip currents, and freshwater floods. Direct deaths also include casualties resulting from lightning and wind-related events (e.g., collapsing structures). Deaths occurring from such factors as heart attacks, house fires, electrocutions from downed power lines, vehicle accidents on wet roads, etc., are considered “indirect” deaths; NOAA, *Hurricane Harvey*, May 9, 2018, https://www.nhc.noaa.gov/data/tcr/AL092017_Harvey.pdf, p. 8.

⁸⁰ NOAA, *Hurricane Harvey*, at 8.

⁸¹ Meredith Roaten, “Public health researchers report 3,000 deaths in Puerto Rico after Hurricane María,” *GW Hatchet*, Aug. 28, 2018, <https://www.gwhatchet.com/2018/08/28/public-health-researchers-report-3000-deaths-in-puerto-rico-after-hurricane-maria/>.

⁸² Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and Related Authorities § 401(a); 42 U.S.C. § 5170.

⁸³ FEMA, “Overview of Local, State, and Federal Response to a Disaster: Unit 3 – Disaster Sequence of Events,” in *State Disaster Management*, Jan. 2003, <https://training.fema.gov/emiweb/downloads/is208sdmunit3.pdf>.

⁸⁴ Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and Related Authorities § 308(a); see 42 U.S.C. § 5151.

Hurricane Harvey

Pre-disaster Challenges

Pre-storm conditions of an area, such as the physical landscape or certain economic circumstances, may lend to distinct conditions influencing how the region recovers from a major disaster. In Texas, following an oil bust in 2014, Houston-area oil bankruptcies were prominent.⁸⁵ Overall unemployment saw an increase from 4.8 percent in September 2015 to 5.7 percent in September 2016,⁸⁶ but had decreased to 4.9 percent by July 2017,⁸⁷ shortly before Harvey made landfall. At the outset of 2017, Houston's unfunded pension liability was estimated to have grown from \$0 to \$4 billion over 15 years.⁸⁸ A Kinder Institute report published in 2016 found a declining number of middle-class neighborhoods in the region, and that a third of all households in Greater Houston found housing costs to be a burden (taking up more than 30 percent of a household's income).⁸⁹

A 2018 report from the International Conference on Science, Education, and Technology (ISET) assessing flood resilience in Texas found that the varying regulatory environment and a lack of awareness by residents of the potential flooding dangers in and around Houston were among the factors that contributed to the heavy damage inflicted by Harvey.⁹⁰ Houston, which had been hit with three "one-in-500-year floods" in three years, is flood-prone due to physical context, the regulatory environment, and the development environment.⁹¹ When land is developed, it is graded and sloped to channel rainfall, and in developed areas (such as Harris County, where the city of Houston resides), peak rainfall runoff can be up to three times as large as peak runoff from undeveloped landscapes.⁹² The runoff flows into the bayous, which can rapidly overflow, flooding the lands and structures that border them.⁹³ Additionally, storms in the Houston area are often a combination of rainfall and high winds, resulting in storm surges in Galveston Bay.⁹⁴

From a regulatory standpoint, Texas operates a fairly laissez-faire system, prioritizing a private economic system subject to few regulations. Private-public partnerships are common, with

⁸⁵ Wolf Richter, "Houston's got a lot of problems," *Business Insider*, Nov. 18, 2016, <https://www.businessinsider.com/houstons-economy-has-a-lot-of-problems-2016-11>.

⁸⁶ *Ibid.*

⁸⁷ U.S. Bureau of Labor Statistics, "Unemployment rates lower in July 2017 than a year earlier in 340 metro areas; higher in 39 areas," Sept. 5, 2017, <https://www.bls.gov/opub/ted/2017/unemployment-rates-lower-in-july-2017-than-a-year-earlier-in-340-metro-areas-higher-in-39-areas.htm>.

⁸⁸ Ryan Holeywell and Leah Binkovitz, "The 6 Biggest Questions Facing Houston in 2017," *Kinder Institute*, Jan. 3, 2017, <https://kinder.rice.edu/urbanedge/6-biggest-questions-facing-houston-2017>.

⁸⁹ *Ibid.*

⁹⁰ ISET-International, American Red Cross Global Disaster Preparedness Center, Zurich, *Houston and Hurricane Harvey: A Call to Action*, Jun. 21, 2018, https://www.zurichna.com/-/media/project/zwp/zna/docs/kh/weather/perc_harvey_final.pdf?la=en&rev=e653cf8b7970497eac14abb7b32633fa.

⁹¹ *Ibid.*, at 15-16.

⁹² *Ibid.*, at 15.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

private actors often playing a significant role in local government.⁹⁵ This results in a complex environment involving a variety of public and private players, leading to implications for the effectiveness of flood risk reduction measures across Houston and Harris County.⁹⁶ The ISET-International report indicated that strong property rights result in local governments exercising little to no control of where infrastructure is built, leading to the extensive development of floodplains, wetlands, and other marginal lands.⁹⁷ Environmentalists and experts in land use and natural disasters indicate that the Houston area's growth in flood-prone areas has diminished the land's already-limited natural ability to absorb water.⁹⁸ Moreover, Houston-area communities with higher populations of people of color and higher poverty levels face increased risks from chemical accidents and everyday toxic exposure because of the hazards caused by chemical facilities in the area.⁹⁹ Several studies of chemical risks have found disproportionate impacts on east Houston, where industrial facilities are concentrated, and where residents are more likely to be poor and people of color.¹⁰⁰ These risks become all the more deadly when a natural disaster strikes.

Storm Impacts

Harvey made landfall as a Category 4 storm on August 25, 2017, first on San Jose Island in Texas and then several hours later on the northeast coast of Copano Bay.¹⁰¹ According to NOAA:

[T]he storm made a slow loop late on 26 August into 27 August and drifted eastward or southeastward for the next few days. Although the center passed well south of the Houston Metro and Golden Triangle (southeastern Texas between Beaumont, Port Arthur, and Orange) areas, torrential rains fell in these locations near a stationary front on the north and east side of Harvey.¹⁰²

Harvey was the most significant tropical cyclone rainfall event in the country since reliable rainfall records began, with the highest storm rainfall report from Harvey at 60.58 inches near Nederland, Texas, and 60.54 inches near Groves, Texas.¹⁰³ Twenty-three seaports were closed, and 781 roads were rendered impassable.¹⁰⁴ Harvey was responsible for at least 68 direct

⁹⁵ Ibid. at 16.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Shawn Boburg and Beth Reinhard, "Houston's 'Wild West' growth," *Washington Post*, Aug. 29, 2017, <https://www.washingtonpost.com/graphics/2017/investigations/harvey-urban-planning/>.

⁹⁹ Center for Science and Democracy and Texas Environmental Justice Advocacy Services, *Double Jeopardy in Houston*, Aug. 22, 2016, <https://www.ucsus.org/resources/double-jeopardy-houston>.

¹⁰⁰ Ibid.

¹⁰¹ NOAA, *Hurricane Harvey*, at 3.

¹⁰² Ibid.

¹⁰³ Ibid. at 6.

¹⁰⁴ FEMA, "Historic Disaster Response to Hurricane Harvey in Texas," Sept. 22, 2017 (last updated Mar. 18, 2021), <https://www.fema.gov/press-release/20210318/historic-disaster-response-hurricane-harvey-texas>.

deaths¹⁰⁵ in the U.S., all of which were in Texas, with over half of the deaths occurring in the Houston metro area of Harris County.¹⁰⁶ According to NOAA, approximately 35 additional deaths have been attributed to indirect causes, such as electrocution, motor vehicle crashes, and isolation from necessary medical services.¹⁰⁷ This equates to at least 103 deaths as a direct or indirect result of Hurricane Harvey. In addition to fatalities, other public health consequences that emerged following Harvey included sewage in the streets, air pollution, and unmet mental health needs.¹⁰⁸

During Harvey, 20 hospitals were closed or evacuated.¹⁰⁹ The Texas Hospital Association surveyed its members located in the impacted area and the initial response from 92 hospitals estimated disaster-related costs totaling \$460 million, as well as impacts to revenue and cash flow relating to billing and claims filing interruptions, office closures, and reduced hours, insurance, and patient payment delays, decreased patient volume, and canceled services.¹¹⁰

Harvey made landfall just a few days before many schools in Texas were scheduled to open for the fall semester, including the Houston Independent School District.¹¹¹ The Texas Education Agency reported that 181 school districts canceled or delayed classes that Monday, and that at least 129 schools remained closed the following Tuesday, many uncertain as to when they would reopen.¹¹² By September 11, 268 of Houston's 280 schools had been reopened,¹¹³ while some other school districts took much longer to reopen due to more extensive storm damage.¹¹⁴

¹⁰⁵ NOAA, *Hurricane Harvey*, at 8.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ Juanita Constible, "The Emerging Public Health Consequences of Hurricane Harvey," *NRDC*, Aug. 29, 2018, <https://www.nrdc.org/experts/juanita-constible/emerging-public-health-consequences-hurricane-harvey>.

¹⁰⁹ Texas Hospital Association, *Texas Hospital Association Hurricane Harvey Analysis*, Feb. 7, 2018, <https://capitol.texas.gov/tlodocs/85R/handouts/C2102018051010001/7d5c2c0d-a060-4a24-8eae-4ae4b7a8bebc.PDF>, p. 2.

¹¹⁰ Beth Jones Sanborn, "Hurricane Harvey lessons are a roadmap for hospital disaster response," *Healthcare Finance News*, Feb. 9, 2018, <https://www.healthcarefinancenews.com/news/hurricane-harvey-lessons-are-roadmap-hospital-disaster-response>.

¹¹¹ Houston Independent School District, *HISD 2017-2018 Academic Calendar*, Revised Sept. 15, 2017, <https://www.houstonisd.org/cms/lib2/TX01001591/Centricity/Domain/46941/2017-18%20Academic%20Calendar.pdf> (last accessed Aug. 3, 2021).

¹¹² Moriah Balingit and Susan Svrluga, "Hurricane Harvey shuttered hundreds of Texas schools," *Washington Post*, Aug. 29, 2017, https://www.washingtonpost.com/local/education/hurricane-harvey-shutters-hundreds-of-texas-schools/2017/08/29/68500ff8-8bfc-11e7-91d5-ab4e4bb76a3a_story.html?utm_term=.e02a991cea0b.

¹¹³ *Ibid.*

¹¹⁴ Chris Shadrock, "Rockport, Fulton schools reopen after Hurricane Harvey," *KSAT*, Oct. 12, 2017, <https://www.ksat.com/weather/2017/10/12/rockport-fulton-schools-reopen-after-hurricane-harvey/>; Larry Seward, "Creech Elementary reopens nearly a year after Hurricane Harvey," *KHOU*, Aug. 15, 2018, <https://www.khou.com/article/news/local/creech-elementary-reopens-a-year-after-hurricane-harvey/285-584194676>.

In September 2017, the Texas Workforce Commission reported that about 125,000 people in Texas had applied for Disaster Unemployment Assistance since Harvey hit.¹¹⁵ A survey conducted by the Episcopal Health Foundation and Kaiser Family Foundation found that nearly half of residents (46 percent) indicated that they or someone in their household experienced employment-related effects of the hurricane, including: losing a job or being laid off (12 percent); having hours cut back at work (32 percent); or some other loss of income such as missing days of work (32 percent).¹¹⁶ The survey also found that immigrants living along the Texas Gulf Coast were more likely than their U.S. born neighbors to suffer employment and income losses as a result of Harvey (64 percent versus 39 percent).¹¹⁷ However, the Bureau of Labor Statistics Current Employment Statistics (CES) survey found that Texas, overall, experienced a growth in employment in September 2017 (with net job losses in the Houston area), and that the state added 39,300 jobs the following month as businesses began recovery efforts.¹¹⁸ Immediate effects of Harvey were also felt by the oil and gas industries: approximately 10 percent of manned oil platforms in the Gulf were evacuated, gas prices rose, and oil and gas rig production was hampered.¹¹⁹

While initial projections of Harvey's damage were estimated to rise to up to \$190 billion,¹²⁰ the FEMA 2018 After-Action report indicated the damage caused by Harvey was \$125 billion.¹²¹ No single agency tracked the full extent of destruction that occurred in Texas, therefore assessing the overall structural damage that Harvey left in its wake was difficult.¹²² The Texas General Land Office (GLO), charged with overseeing the state's housing recovery efforts, received some, but

¹¹⁵ See Houston Public Media Staff, "125,000 Unemployed Texas Workers Have Filed Claims After Harvey," *Houston Public Media*, Sept. 15, 2017, <https://www.houstonpublicmedia.org/articles/news/2017/09/15/237473/125000-unemployed-texas-workers-have-filed-claims-after-harvey/>.

¹¹⁶ Hamel et al., "An Early Assessment of Hurricane Harvey's Impact on Vulnerable Texans in the Gulf Coast Region," at 5.

¹¹⁷ Shao-Chee Sim, Vice President, Research, Innovation and Evaluation, Episcopal Health Foundation, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas Briefing before the U.S. Comm'n on Civil Rights, Oct. 21, 2021, at 2 (herein Sim Statement).

¹¹⁸ U.S. Bureau of Labor Statistics, "Estimating state and local employment in recent disasters – from Hurricane Harvey to the COVID-19 pandemic," Apr. 2021, <https://www.bls.gov/opub/mlr/2021/article/estimating-state-and-local-employment-in-recent-disasters-from-hurricane-harvey-to-the-covid-19-pandemic.htm>.

¹¹⁹ Rachael Dottle, Ritchie King, and Ella Koeze, "Hurricane Harvey's Impact – And How It Compares To Other Storms," *FiveThirtyEight*, Sept. 2, 2017, <https://fivethirtyeight.com/features/hurricane-harveys-impact-and-how-it-compares-to-other-storms/>; Thomson Reuters, *Harvey's energy impact*, Updated Sept. 8, 2017, <http://fingfx.thomsonreuters.com/gfx/rngs/STORM-HARVEY-ENERGY-INFRASTRUCTURE/010050M21F9/index.html> (last accessed Aug. 3, 2021).

¹²⁰ Michelle Fox, "Hurricane Harvey will likely be most expensive natural disaster in US history: AccuWeather," *CNBC*, Aug. 31, 2017, <https://www.cnb.com/2017/08/31/hurricane-harvey-likely-most-expensive-natural-disaster-in-us-history-accuweather.html>.

¹²¹ FEMA, *2017 Hurricane Season FEMA After-Action Report*, Jul. 12, 2018, https://www.fema.gov/sites/default/files/2020-08/fema_hurricane-season-after-action-report_2017.pdf, p. 1.

¹²² Brandon Formby, "How much damage did Harvey do to Texas homes? There may never be an exact answer," *The Texas Tribune*, Nov. 22, 2017, <https://www.texastribune.org/2017/11/22/texas-may-never-know-extent-damage-harvey-did-peoples-homes/>.

not all, of the data collected by FEMA – “leaving the state agency in charge of housing recovery without the full picture of housing needs.”¹²³ According to NOAA, damage caused by flooding was catastrophic – over 300,000 structures in the region were flooded, as well as up to 500,000 cars.¹²⁴ Nearly 80,000 homes had at least 18 inches of floodwater, 23,000 of those with more than 5 feet.¹²⁵ In Houston alone, nearly half of all homes had some kind of damage: 209,422 of the city’s 501,721 homes had been damaged, and only 40 percent of those homes were in a floodplain.¹²⁶ By November 2017, FEMA had conducted inspections on more than 570,000 homes damaged by Harvey, leaving over 5,000 left to inspect.¹²⁷ In the Houston area, Harvey flooded more than 150,000 homes.¹²⁸

The flooding in Texas forced 780,000 survivors from their homes, of whom more than 42,000 were temporarily housed in 270 shelters in the days following landfall.¹²⁹ A year later, 15 percent of homes that were damaged or destroyed by the storm were still unlivable.¹³⁰ Three years following Harvey, researchers at the University of Houston conducted a panel survey to understand the long-term experiences of people impacted by the storm, and found that close to 20 percent of respondents who had been displaced by the storm were still in temporary housing.¹³¹

Loss of utilities was also widespread following Harvey. By late Saturday, August 26, a peak 338,000 electric customer outages were reported across the impacted area, and the total number of reported customer outages exceeded 1.67 million in the Electric Reliability Council of Texas (ERCOT) area.¹³² According to ERCOT, bulk power system damage affected over 2.02 million customers, over 850 transmission structures were downed or damaged, over 6,200 distribution poles were downed or damaged, and over 12,000 employees and contractors were involved in the restoration.¹³³ Most regional entities returned 95 percent or more of their customers to service between August 26 and September 2.¹³⁴ Due to flooding in Houston, one of the hardest-hit areas,

¹²³ Ibid.

¹²⁴ NOAA, *Hurricane Harvey*, at 9.

¹²⁵ FEMA, “Historic Disaster Response to Hurricane Harvey in Texas,” Sept. 22, 2017 (updated Mar. 18, 2021), <https://www.fema.gov/press-release/20210318/historic-disaster-response-hurricane-harvey-texas>.

¹²⁶ Keaton Fox, “Updated analysis shows nearly half of Houston homes damaged in Harvey,” *ABC13*, Oct. 11, 2018, <https://abc13.com/half-of-houstons-homes-were-damaged-in-hurricane-harvey/4461534/>.

¹²⁷ Formby, “How much damage did Harvey do to Texas homes? There may never be an exact answer.”

¹²⁸ Juan A. Lozano, “3 years after Harvey, some in Houston still waiting for help,” *ABC News*, Aug. 24, 2020, <https://abcnews.go.com/US/wireStory/years-harvey-houston-waiting-72562555>.

¹²⁹ FEMA 2017 *Hurricane Season After-Action Report*, at 1.

¹³⁰ Brandon Formby, “Nearly 10 percent of Texans displaced by Harvey still haven’t gone home, survey says,” *The Texas Tribune*, Aug. 23, 2018, <https://www.texastribune.org/2018/08/23/fema-and-texas-dont-know-how-many-people-hurricane-harvey-displaced/>.

¹³¹ Sánchez Statement, at 2; see also <https://uh.edu/hobby/harvey/>.

¹³² North American Electric Reliability Corporation, *Hurricane Harvey Event Analysis Report*, Mar. 2018, https://www.nerc.com/pa/rm/ea/Hurricane_Harvey_EAR_DL/NERC_Hurricane_Harvey_EAR_20180309.pdf, p. v.

¹³³ Ibid, at vi.

¹³⁴ Ibid.

power restoration lagged and it was not completed until September 8.¹³⁵ Sixty-one public-water systems and 40 wastewater-treatment facilities were rendered inoperable or destroyed at the height of the storm, and more than 200 public-water systems had to issue boil-water notices because of issues caused by Harvey.¹³⁶ In December 2017, the Texas Commission on Environmental Quality reported that more than 3,700 people across southeast Texas had gone without access to clean drinking water since late August of that year.¹³⁷

Analysis of the Disaster Information Reporting System (DIRS) revealed that, on the first day of reporting, 4 percent (approximately 312) of the 7,804 cell sites in Harvey's path were out of service; this was in addition to five out-of-service switching centers operating on back-up power.¹³⁸ Some areas, however, were highly impacted. Three counties in Texas – Aransas, Refugio, and San Patricio – all suffered cell outages in excess of 50 percent.¹³⁹ Further, Rockport, Texas experienced a 95 percent outage in cellphone service.¹⁴⁰ On the first day after landfall, nine Public Safety Answering Points (PSAPs) were affected (eight in Texas, and one in Louisiana), each in different ways: some were unable to receive incoming calls with no re-routing available; others received 911 calls without location information.¹⁴¹ By September 5, the eleventh and final day of DIRS reporting, 1.6 percent of cell sites were out of service, and all switching centers were fully operational.¹⁴² Also by September 5, only five PSAPs remained affected, and traffic to these was re-routed to fully functional PSAPs.¹⁴³

¹³⁵ Ibid, at v.

¹³⁶ Texas Commission on Environmental Quality, *Hurricane Harvey Response 2017, After Action Review Report*, Apr. 3, 2018, p. 2, <https://www.tceq.texas.gov/assets/public/response/hurricanes/hurricane-harvey-after-action-review-report.pdf>.

¹³⁷ Associated Press, “Harvey leaves thousands still waiting on clean water,” *Fox News*, Dec. 4, 2017, <https://www.foxnews.com/us/harvey-leaves-thousands-still-waiting-on-clean-water>.

¹³⁸ Federal Communications Commission (herein FCC), *2017 Atlantic Hurricane Season Impact on Communications: Report and Recommendations*, Public Safety Docket No. 17-344, Aug. 2018, p. 6, <https://www.fcc.gov/document/2017-atlantic-hurricane-season-report-impact-communications>; Marguerite Reardon, “How the wireless carriers fared during Hurricane Harvey,” *CNET*, Sept. 3, 2017, <https://www.cnet.com/news/hurricane-harvey-phone-service/>.

¹³⁹ FCC, *2017 Atlantic Hurricane Season Impact on Communications: Report and Recommendations*, at 7-8. These counties were subject to mandatory evacuation orders, so it is unclear how many people were affected by the outages; Ryan Knutson, “Cell Networks Suffer Outages in Harvey’s Wake,” *The Wall Street Journal*, Aug. 27, 2017, <https://www.wsj.com/articles/cell-networks-suffer-outages-in-harveys-wake-1503792185>.

¹⁴⁰ Knutson, “Cell Networks Suffer Outages in Harvey’s Wake.”

¹⁴¹ FCC, *2017 Atlantic Hurricane Season Impact on Communications: Report and Recommendations*, at 6.

¹⁴² Ibid.

¹⁴³ Ibid.

Hurricane María

Pre-disaster Challenges

A series of Supreme Court rulings in 1901, known as the Insular¹⁴⁴ Cases,¹⁴⁵ allowed Congress to limit the constitutional rights of U.S. territories, including Puerto Rico.¹⁴⁶ Charlotte Gossett Navarro, Chief Director of Puerto Rico Operations for the Hispanic Federation, testified that the 1901 decision was the legal basis for the denial of full rights that occurred when, in 1917, the United States conferred citizenship “but not all the corresponding rights that come with citizenship” to Puerto Ricans.¹⁴⁷ For example, these legal precedents are used to deny Puerto Rican residents of Supplemental Security Income (SSI).¹⁴⁸ When Congress enacted SSI in 1972, it chose to exclude Puerto Ricans from the SSI program and alternately, deem them eligible for a different government entitlement: Aid to the Aged, Blind, and Disabled.¹⁴⁹ To qualify for this alternative program, Puerto Ricans cannot earn more than \$65 a month, compared with the \$750 monthly SSI participants may earn. Those who qualify under Puerto Rico’s program get an average benefit of \$77 a month, while SSI beneficiaries receive a monthly average of \$533.¹⁵⁰ Both Republican and Democratic administrations continued to advocate for the denial of SSI eligibility to Puerto Ricans in the case *United States v Vaello-Madero*, in which the Supreme Court ruled in 2022 that the Fifth Amendment Due Process Clause does not require Congress to make SSI benefits available to residents of Puerto Rico to the same extent that it makes those benefits available to residents of the States.¹⁵¹ The Insular Cases also allow Congress to exclude Puerto Rico from federal bankruptcy protection laws.¹⁵²

To complicate Puerto Rico’s recovery from María, several pre-disaster challenges highlight Puerto Rico’s “complex economic, social, political, and environmental vulnerabilities.”¹⁵³ In

¹⁴⁴ An insular area is a “jurisdiction that is neither a part of one of the several States nor a Federal district. This is the current generic term to refer to any commonwealth, freely associated state, possession or territory or Territory.” U.S. Dep’t of the Interior, “Definitions of Insular Area Political Organizations,” <https://www.doi.gov/oia/islands/politicatypes> (accessed Mar. 2, 2022)

¹⁴⁵ A series of opinions by the U.S. Supreme Court regarding the acquisition and governance of the territories acquired in the Spanish-American War.

Juan R. Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 29 U. Pa. J. Int’l L. 283 (2007), <https://scholarship.law.upenn.edu/jil/vol29/iss2/1>

¹⁴⁶ *Downes v. Bidwell*, 182 U.S. 244 (1901); *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Huus v. New York and Porto Rico Steamship Co.*, 182 U.S. 392 (1901).

¹⁴⁷ Navarro Statement, at 2.

¹⁴⁸ *Ibid.*

¹⁴⁹ Nicole Acevedo, “Supreme Court seems divided over Puerto Rico’s exclusion from federal benefits,” *NBC News*, Nov. 9, 2021, <https://www.nbcnews.com/news/latino/supreme-court-seems-divided-puerto-ricos-exclusion-federal-benefits-rcna4969>.

¹⁵⁰ *Ibid.*

¹⁵¹ 956 F.3d 12 (1st Cir. 2020).

¹⁵² Navarro Statement, at 2.

¹⁵³ *Ibid.*, at 1.

1996, Congress repealed and began to phase out a 1976 tax credit¹⁵⁴ that granted U.S. corporations a tax exemption on income generated in Puerto Rico.¹⁵⁵ Since the phaseout completed in 2006, Puerto Rican economic growth has seen lower labor force participation and higher unemployment than in the continental United States.¹⁵⁶

The average unemployment rate in Puerto Rico in 2017 was 10.9 percent,¹⁵⁷ compared to the average unemployment rate nationwide of 4.4 percent for the same year¹⁵⁸ (see **Error! Reference source not found.** as an illustration of monthly unemployment rates from 2007 through 2017). In 2017, the poverty rate for Puerto Rico was 44.4 percent, compared to the national rate of 13.4 percent.¹⁵⁹ This high poverty rate means that families likely would not have the reserves to prepare, mitigate, and address housing insecurity in the aftermath of a catastrophic event.¹⁶⁰ Additionally, nearly half of Puerto Ricans use at least 30 percent of their income to pay their rent or mortgage¹⁶¹ (compared to 20.9 percent of homeowners with a mortgage and 40.6 percent of renters who spend 35 percent or more on housing nationally),¹⁶² and almost half of Puerto Ricans live below the federal poverty level (more than three times the poverty rate in the continental U.S.)¹⁶³

¹⁵⁴ 26 U.S.C. § 936, *repealed by* Small Business Protection Act of 1996, Pub. L. No. 104-188, § 1601, 110 Stat. 1755, 1827.

¹⁵⁵ RAND Corporation, *After Hurricane María*, p. 9, https://www.rand.org/pubs/research_reports/RR2595.html.

¹⁵⁶ *Ibid.*

¹⁵⁷ Bureau of Labor Statistics (herein BLS), “Economy at a Glance: Puerto Rico,”

<https://www.bls.gov/eag/eag.pr.htm> (last accessed Jul. 22, 2021).

¹⁵⁸ BLS, “Economy at a Glance: United States,” <https://www.bls.gov/eag/eag.us.htm> (last accessed Jul. 22, 2021).

¹⁵⁹ U.S. Census Bureau, “Poverty Status in the Past 12 Months,” *2017: ACS 1-Year Estimates*, https://data.census.gov/cedsci/table?q=Poverty&g=0100000US_0400000US72&y=2017&tid=ACSS1Y2017.S1701 (last accessed Jul. 22, 2021).

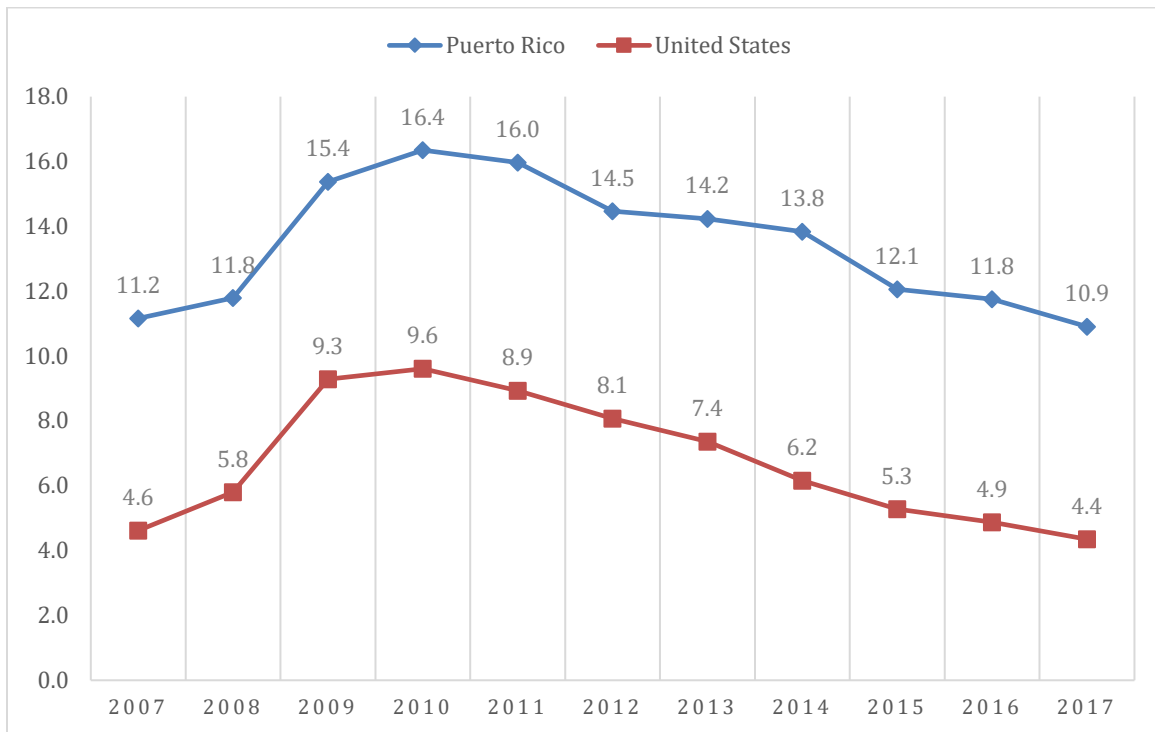
¹⁶⁰ Aubert Statement, at 3.

¹⁶¹ *Ibid.*

¹⁶² U.S. Census Bureau, “For Renters, Housing Cost Burden Is About the Same,” Nov. 4, 2019, <https://www.census.gov/library/stories/2019/11/decade-after-the-recession-housing-costs-ease-for-homeowner.html>.

¹⁶³ Brian Glassman, “A Third of Movers From Puerto Rico to the Mainland United States Relocated to Florida in 2018,” Census Bureau, Sept. 26, 2019, <https://www.census.gov/library/stories/2019/09/puerto-rico-outmigration-increases-poverty-declines.html>.

Figure 1 Unemployment Rates for Puerto Rico and U.S. (2007-2017)



Source: BLS, “Economy at a Glance: Puerto Rico,” <https://www.bls.gov/eag/eag.pr.htm>, retrieved Jul. 22, 2021; BLS, “Economy at a Glance: United States,” <https://www.bls.gov/eag/eag.us.htm>, retrieved Jul. 22, 2021. Chart developed by Commission staff.

Although the unemployment rate in Puerto Rico hovered between 10 percent and 12 percent from 2000 through 2008, it rose to approximately 16 percent from 2009 to 2011.¹⁶⁴ Between 2011 and 2017, the unemployment rate decreased from 16 percent to 10 percent.¹⁶⁵ While the unemployment rates in the continental United States and Puerto Rico follow similar trends, the rate in the continental United States is, on average, less than half that in Puerto Rico (see **Error! Reference source not found.**).¹⁶⁶ The higher rates of unemployment are the result of many contributing factors, such as the phase-out of the tax incentives, recessionary pressure in the United States in 2001 and during the Great Recession from 2007-2009, high fuel prices, and high costs of doing business, among others.¹⁶⁷ Fiscal issues spread to many facets throughout the territory: prior to María, underutilized schools were consolidated, with an additional 167 set to close in 2017.¹⁶⁸ And with many professionals searching for opportunities in the continental

¹⁶⁴ BLS, “Economy at a Glance: Puerto Rico.”

¹⁶⁵ Ibid.

¹⁶⁶ RAND, *After Hurricane María*, at 9.

¹⁶⁷ Ibid.

¹⁶⁸ Richard V. Reeves and Katherine Guyot, “Keeping our PROMESA: What the U.S. can do about Puerto Rico’s fiscal crisis,” *Brookings*, Sept. 11, 2017, <https://www.brookings.edu/research/keeping-our-promesa-what-the-u-s-can-do-about-puerto-ricos-fiscal-crisis/>.

U.S., the College of Physicians and Surgeons of Puerto Rico reported that at least two doctors per day left the Island in 2016.¹⁶⁹

Heavy borrowing by Puerto Rico, its municipal governments, and public-sector corporations resulted in high and unsustainable levels of debt, and Puerto Rico's credit rating dropped below investment grade in early 2014, followed by a series of defaults on debt payments.¹⁷⁰ The Puerto Rican government was facing more than \$72 billion in debt, with more than \$55 billion in unfunded pension liabilities.¹⁷¹ The Insular Cases described above excluded Puerto Rico from filing for federal bankruptcy.¹⁷² In June 2016, President Obama signed a law creating a Financial Oversight and Management Board under the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).¹⁷³ Congress authorized the Board to file for bankruptcy on behalf of Puerto Rico and its instrumentalities, to supervise and modify Puerto Rico's laws and budget to "achieve fiscal responsibility and access to the capital markets," and to gather evidence and conduct investigations in support of these efforts.¹⁷⁴ This Board is in charge of overseeing the debt restructuring and approving fiscal austerity plans to cut the Island's public budget.¹⁷⁵ President Obama appointed all seven members of the Board in August 2016.¹⁷⁶ The Governor of Puerto Rico serves *ex officio* as an eighth member without voting rights.¹⁷⁷ In May 2017, the Oversight Board certified Title III filings;¹⁷⁸ these filings contain certain Chapter 9 bankruptcy provisions, normally used for municipalities, and recognize that, while Puerto Rico is not part of a state, it must be treated as sovereign in some ways.¹⁷⁹

In addition to financial troubles, Puerto Rico also faced existing infrastructure issues prior to María's landfall. Infrastructure maintenance had been deferred for many years, and is particularly challenging due to a "hot, humid, saline, and densely vegetated environment."¹⁸⁰ In

¹⁶⁹ *Ibid.*

¹⁷⁰ RAND, *After Hurricane María*, at 9-10.

¹⁷¹ Financial Oversight & Management Board for Puerto Rico, <https://oversightboard.pr.gov/debt/> (last accessed Jul. 21, 2021).

¹⁷² Navarro Statement, at 2.

¹⁷³ Puerto Rico Oversight, Management, and Economic Stability Act of 2016 (PROMESA), Pub. L. No. 114-187, 130 Stat. 549, (codified at 48 U.S.C. § 2101 *et seq.*), <https://www.congress.gov/bill/114th-congress/senate-bill/2328>.

¹⁷⁴ *Id.* at 130 Stat. 558-559, 553-55, 558-61, 563-79, 582.

¹⁷⁵ *See id.* at 566.

¹⁷⁶ Obama White House Archives, "President Obama Announces the Appointment of Seven Individuals to the Financial Oversight and Management Board for Puerto Rico," Aug. 31, 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/08/31/president-obama-announces-appointment-seven-individuals-financial>.

¹⁷⁷ Puerto Rico Oversight, Management, and Economic Stability Act of 2016 (PROMESA), Pub. L. No. 114-187, 130 Stat. 555.

¹⁷⁸ Financial Oversight and Management Board for Puerto Rico, "Oversight Board Certifies Title III Filings," May 3, 2017, <https://drive.google.com/file/d/1f7En7U3r1YgJdn0pcVvmJ6PHtT26qbTF/view> (last accessed Jul. 21, 2021).

¹⁷⁹ Mary Williams Walsh, "Puerto Rico Declares a Form of Bankruptcy," *The New York Times*, May 3, 2017, <https://www.nytimes.com/2017/05/03/business/dealbook/puerto-rico-debt.html>.

¹⁸⁰ RAND, *After Hurricane María*, at 12.

November 2016, Synapse Energy Associates released a report commissioned by the Puerto Rican Electrical Power Authority (PREPA) that the territory's energy infrastructure was facing a crisis.¹⁸¹ Sergio Marxuach, Policy Director at the non-partisan Center for a New Economy, indicated that tasks, such as pruning the trees that interacted with power lines during a storm, had been postponed due to PREPA's budget problems.¹⁸² The average power plant on the Island is also "significantly older" than the average plant in the continental U.S.¹⁸³ Prior to María, in July 2017, PREPA filed for protection under Title III while laden with \$9 billion in debt.¹⁸⁴

While homeownership is generally high in the territory, mortgages are less common than in other areas of the United States, and a substantial number of residential housing structures are part of an informal housing sector.¹⁸⁵ Many of these homes were built without approved engineering or architectural plans, resulting in construction that fell short of building codes.¹⁸⁶ Further, residents often do not have a registered title to the land the structures are on, further complicating recovery efforts.¹⁸⁷ A 2007 study commissioned by the Association of Home Builders of Puerto Rico found that 55 percent of residential and commercial construction was informal,¹⁸⁸ or constructed without building permits or following land use codes.¹⁸⁹ This type of construction is common in all parts of Puerto Rico, often going back generations.¹⁹⁰ A local planner indicated that "[t]here are hundreds of thousands of homes in the island built informally, with no permits and [that] are not up to code. Some of that informality is of people that do not have a title."¹⁹¹

Puerto Rico was also struggling from geographic vulnerabilities due to urbanization and environmental degradations in areas at high risk of infrastructure failure such as being flood-prone, or landslide-prone.¹⁹² Rapid changes to urban land cover and the consequent loss of soil capacity to absorb rainfall, combined with poor maintenance of urban drainage, contributed to

¹⁸¹ See Erin Dooley, "Puerto Rico warned power grid 'literally falling apart' before María hit," *ABC News*, Oct. 18, 2019, <https://abcnews.go.com/US/puerto-rico-warned-power-grid-literally-falling-maria/story?id=50560446>.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ See Lauren Hirsch and Nick Brown, "Puerto Rican power utility files for bankruptcy," *Reuters*, Jul. 2, 2017, <https://www.reuters.com/article/us-puertorico-debt-prepa/puerto-rican-power-utility-files-for-bankruptcy-idUSKBN19O02F>.

¹⁸⁵ RAND *After Hurricane María* at 239.

¹⁸⁶ *Ibid.*, at 239-241.

¹⁸⁷ *Ibid.*

¹⁸⁸ RAND *After Hurricane María*, at 241.

¹⁸⁹ Ivis García, "The Lack of Proof of Ownership in Puerto Rico Is Crippling Repairs in the Aftermath of Hurricane María," *The American Bar Association*, May 21, 2021, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/vol--44--no-2--housing/the-lack-of-proof-of-ownership-in-puerto-rico-is-crippling-repai/.

¹⁹⁰ Acevedo and Pacheco, "No deeds, no aid to rebuild homes: Puerto Rico's reconstruction challenge."

¹⁹¹ Ivis García, "Deemed Ineligible: Reasons Homeowners in Puerto Rico Were Deemed Aid After Hurricane María," *Housing Policy Debate*, Apr. 2021, p. 13, https://nlihc.org/sites/default/files/Deemed_Ineligible_Garcia_2021.pdf.

¹⁹² RAND *After Hurricane María* at 18.

increased runoff and associated urban floods, which were frequent even before hurricanes.¹⁹³ Twenty-four percent of the population lived in high to high/medium flooding risk zones, and at least 245,586 houses were located on flood plains.¹⁹⁴ The geography of Puerto Rico also inhibited preparation for the disaster in the form of evacuation.¹⁹⁵ Tevi Troy, Former Deputy Secretary of the Department of Health and Human Services, testified that “it is harder for the residents themselves to evacuate when planes and boats are the only avenues of escape. We saw the lines of cars on Interstate 95 headed north from Florida before Irma. Such an escape route was not available to Puerto Ricans.”¹⁹⁶

Storm Impacts

María made landfall on the southeast coast of Puerto Rico near Yabucoa with winds of a Category 4 storm, on September 20, 2017.¹⁹⁷ The hurricane’s center crossed Puerto Rico diagonally from southeast to northwest, and had a tripling of its eye diameter, increasing the areal exposure of the Island to the hurricane’s highest winds.¹⁹⁸ María affected every resident on the Island, and according to the FEMA 2018 After-Action report, caused \$90 billion in damages.¹⁹⁹ An early NOAA report about María indicated the official death toll was 65, but that the death toll was “highly uncertain.”²⁰⁰ Later, NOAA updated its death count to over 2,900, making María the deadliest of the 2017 storms.²⁰¹ The Puerto Rican government increased its official death toll to 2,975 in August 2018 following the release of a report from the Milken Institute of Public Health at George Washington University.²⁰² This study estimated “excess mortality due to the hurricane,” finding that mortality rates in Puerto Rico slowly decreased until August 2017, and increased from September 2017 through February 2018.²⁰³ The study reported that:

¹⁹³ See Tania Lopez-Marrero and Petra Tschakert, “From Theory to Practice: Building More Resilient Communities in Flood-Prone Areas,” *Environment and Urbanization*, 23(1): 229-249 (Apr. 2011), <https://journals.sagepub.com/doi/pdf/10.1177/0956247810396055>; see also RAND, *After Hurricane María*, at 18.

¹⁹⁴ Aubert Statement, at 11-12.

¹⁹⁵ Tevi Troy, Former Deputy Secretary of Health and Human Services, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights and Protections Following a Natural Disaster Briefing before the U.S. Comm’n on Civil Rights, Jun. 25, 2021, at 4 (herein Troy Statement).

¹⁹⁶ Troy Statement at 4.

¹⁹⁷ NOAA, *Hurricane María*, Feb. 14, 2019, https://www.nhc.noaa.gov/data/tcr/AL152017_Maria.pdf, p. 2.

¹⁹⁸ *Ibid.* at 2,.4.

¹⁹⁹ FEMA 2017 *Hurricane Season After-Action Report* at 1-2.

²⁰⁰ NOAA, *Hurricane María*, at 6; see also Adrian Florido, “2 Years After Hurricane María Hit Puerto Rico, The Exact Death Toll Remains Unknown,” NPR, <https://www.npr.org/2019/09/24/763958799/2-years-after-hurricane-maria-hit-puerto-rico-the-exact-death-toll-remains-unkno>.

²⁰¹ NOAA, “Fast Facts: Hurricane Costs,” <https://coast.noaa.gov/states/fast-facts/hurricane-costs.html> (last accessed Aug. 3, 2021).

²⁰² Meredith Roaten, “Public health researchers report 3,000 deaths in Puerto Rico after Hurricane María,” *GW Hatchet*, Aug. 28, 2018, <https://www.gwhatchet.com/2018/08/28/public-health-researchers-report-3000-deaths-in-puerto-rico-after-hurricane-maria/>.

²⁰³ George Washington University Milken Institute of Public Health, *Ascertainment of the Estimated Excess Mortality From Hurricane María in Puerto Rico*, 2018, pp. i-ii, <https://publichealth.gwu.edu/sites/default/files/downloads/projects/PRstudy/Acertainment%20of%20the%20Estimated%20Excess%20Mortality%20from%20Hurricane%20María%20in%20Puerto%20Rico.pdf>.

The results of our analysis of total excess mortality by socio-demographic subgroups show that every social stratum and age group was affected by excess mortality. However, the impact differed by age and socioeconomic status. The risk of death was 45% higher and persistent until the end of the study period for populations living in low socioeconomic development municipalities, and older males (65+) experienced continuous elevated risk of death through February. Overall, we estimate that 40% of municipalities experienced significantly higher mortality in the study period than in the comparable period of the previous two years.²⁰⁴

María hit more than 786,000 homes, causing minor damage to some, but sweeping others from their foundations.²⁰⁵ Researchers have worked to quantify the migration dynamics following María.²⁰⁶ The number of Puerto Ricans that fled to Florida alone following María hit 200,000 in just over two months.²⁰⁷ According to U.S. Census data, the number of people living in Puerto Rico decreased by 142,000 (4.4 percent) from 3,337,000 in 2017 to 3,195,000 in 2018.²⁰⁸ The Census Bureau, however, acknowledged that incorporating additional information, such as travel data, may provide a better estimate of Puerto Rico's population change.²⁰⁹ Researchers found that from July 2017 through July 2018, air travel data predicted a population loss of 168,295 (representing a 5 percent decrease).²¹⁰ Additionally, mobile phone-based estimates predict a loss of 235,375 from July 2017 to May 2018 (8 percent decrease), and social media-based estimates predict a loss of 476,779 from August 2017 to August 2018 (17 percent decrease).²¹¹

²⁰⁴ Ibid, at iii.

²⁰⁵ Danica Coto, "Thousands in Puerto Rico still without housing since María," *AP News*, Jul. 24, 2020, <https://apnews.com/article/ap-top-news-puerto-rico-latin-america-caribbean-hurricanes-a2cf35e2f8893592ec4b59d90baae1ac>.

²⁰⁶ Rolando J. Acosta, Nishant Kishore, Rafael A. Irizarry, and Caroline O. Buckee, "Quantifying the dynamics of migration after Hurricane María in Puerto Rico," *PNAS*, 117(51), Dec. 2020, <https://www.pnas.org/content/pnas/117/51/32772.full.pdf>; see also Yago Martin, Susan L. Cutter, Zhenlong Li, Christopher T. Emrich, and Jerry T. Mitchell, "Using geotagged tweets to track population movements to and from Puerto Rico after Hurricane María," *Population and Environment*, 42, pp. 4-27, Feb. 2020, <https://link.springer.com/article/10.1007/s11111-020-00338-6>; Jason Schachter and Antonio Bruce, "Estimating Puerto Rico's Population After Hurricane María: Revising Methods to Better Reflect the Impact of Disaster," *U.S. Census Bureau*, Aug. 19, 2020, <https://www.census.gov/library/stories/2020/08/estimating-puerto-rico-population-after-hurricane-maria.html>.

²⁰⁷ Carmen Sesin, "Over 200,000 Puerto Ricans have arrived in Florida since Hurricane María," *NBC News*, Nov. 30, 2017, <https://www.nbcnews.com/news/latino/over-200-000-puerto-ricans-have-arrived-florida-hurricane-maria-n825111>.

²⁰⁸ Brian Glassman, "A Third of Movers From Puerto Rico to the Mainland United States Relocated to Florida in 2018," *U.S. Census Bureau*, Sept. 26, 2019, <https://www.census.gov/library/stories/2019/09/puerto-rico-outmigration-increases-poverty-declines.html>.

²⁰⁹ Jason Schachter and Antonio Bruce, "Estimating Puerto Rico's Population After Hurricane María: Revising Methods to Better Reflect the Impact of Disaster," *U.S. Census Bureau*, Aug. 19, 2020, <https://www.census.gov/library/stories/2020/08/estimating-puerto-rico-population-after-hurricane-maria.html>.

²¹⁰ Acosta et al., "Quantifying the dynamics of migration after Hurricane María in Puerto Rico."

²¹¹ Ibid.

Prior to María making landfall in Puerto Rico, Hurricane Irma passed near San Juan on September 6, 2017, and left more than 1 million electric customers without power and more than 56,00 people without potable water for several days.²¹² Once María hit, the storm surge and wave action from María continued to produce extensive damage to buildings across Puerto Rico, damaging marinas and harbors along the east and southeast coasts.²¹³ Heavy rainfall meant that many parts of the Island received over 15 inches of rain in a 48-hour period,²¹⁴ with one part receiving nearly 38 inches.²¹⁵ The La Plata River flooded the entire Alluvial valley, resulting in hundreds of families needing to be rescued from their rooftops.²¹⁶ On the Puerto Rican island of Vieques, all wooden structures were either damaged or destroyed.²¹⁷ Approximately 80 percent of the Island's crop value was wiped out, representing a \$780 million loss in agricultural yields.²¹⁸

María knocked down 80 percent of Puerto Rico's utility poles and all transmission lines, resulting in the loss of power to the Island's 3.4 million residents.²¹⁹ The immediate aftermath of the storm rendered 100 percent of the power grid, 95 percent of cellular sites, and 43 percent of wastewater treatment plants inoperable.²²⁰ Additionally, more than 97 percent of roads were impassable.²²¹ The governor's office indicated that the electricity grid had been so badly hit it could take months to restore power to all residents.²²² At the end of 2017, nearly half of Puerto Rico's residents were still without power.²²³ Eleven months after María, in August 2018, Puerto Rico Electric Power Authority, Puerto Rico's sole provider of electricity for 1.5 million residents, stated that power had been returned to all homes that lost power.²²⁴

²¹² Alex Johnson, Daniel Arkin, Jason Cumming, and Bill Karins, "Hurricane Irma Skirts Puerto Rico, Leaves 1 Million Without Power," *NBC News*, Sept. 7, 2017, <https://www.nbcnews.com/storyline/hurricane-irma/hurricane-irma-skirts-puerto-rico-lashing-it-powerful-winds-flooding-n799086>; see also RAND Corporation, *Hurricanes Irma and María: Impact and Aftermath*, <https://www.rand.org/hsrd/hsoac/projects/puerto-rico-recovery/hurricanes-irma-and-maria.html> (last accessed Aug. 3, 2021).

²¹³ NOAA, *Hurricane María*, at 7.

²¹⁴ RAND, *Hurricanes Irma and María: Impact and Aftermath*.

²¹⁵ NOAA, *Hurricane María*, at 6.

²¹⁶ *Ibid.*, at 7.

²¹⁷ *Ibid.*, at 8.

²¹⁸ Frances Robles and Luis Ferre-Sadurni, "Puerto Rico's Agriculture and Farmers Decimated by María," *The New York Times*, Sept. 24, 2017, <https://www.nytimes.com/2017/09/24/us/puerto-rico-hurricane-maria-agriculture.html>.

²¹⁹ NOAA, *Hurricane María* at 7.

²²⁰ See, RAND, *Hurricanes Irma and María: Impact and Aftermath*.

²²¹ *Ibid.*

²²² "Hurricane María: Puerto Rico may be months without power," *BBC*, Sept. 21, 2017, <https://www.bbc.com/news/world-latin-america-41340392>.

²²³ NOAA, *Hurricane María*, at 7.

²²⁴ Emily Sullivan, "Nearly A Year After María, Puerto Rico Officials Claim Power Is Totally Restored," *NPR*, Aug. 15, 2018, <https://www.npr.org/2018/08/15/638739819/nearly-a-year-after-maria-puerto-rico-officials-claim-power-totally-restored>.

Access to clean drinking water was also minimal because of water treatment and pumping stations being knocked out. By October 1, 2017, water access was below 50 percent.²²⁵ By November 16, 2017, Puerto Rico's water authority reported that 91 percent of the population had access to water, leaving approximately 300,000 people without access.²²⁶ As of June 6, 2018, Puerto Rican officials claimed that water service on the Island had been restored to more than 96 percent of customers.²²⁷ However, a Washington Post-Kaiser Family Foundation survey of 1,500 randomly selected residents in Puerto Rico in the summer of 2018 found that in the year since María, 50 percent indicated that people in their households could not get enough water to drink, and 53 percent were worried about the quality of water in their homes.²²⁸

Regarding telecommunications, at its worst, 95.6 percent of the cell sites were out of service in Puerto Rico, and wireless service was restored gradually over a six-month period.²²⁹ An FCC report indicates that this type of outage was considerably longer than for the other 2017 storms (e.g., wireless communications services were generally restored a week and a half after Harvey's landfall).²³⁰ After six months, 4 percent of cell sites remained out of service (i.e., completely inoperable).²³¹

When María made landfall, there were 871,000 jobs in Puerto Rico, and while Puerto Rico was able to recover some lost jobs in subsequent months, in September 2018 the Island reported 855,000 jobs.²³² Mass migration contributed to the decrease in the unemployment rate, from 10.6 percent in September 2017 to 8.4 percent in September 2018.²³³ One year after the storm, an estimated 8,000 small businesses, or 10 percent of all such businesses, remained closed.²³⁴ Sergio Marxuach, Policy Director for Center for a New Economy, wrote to the Commission that according to estimates made by Moody's Analytics, the decrease in real gross domestic product (GDP) could have been as deep as 15 percent during the last quarter of 2017, while

²²⁵ Josh Michaud and Jennifer Kates, "Public Health in Puerto Rico after Hurricane María," *Kaiser Family Foundation*, Nov. 17, 2017, <https://www.kff.org/other/issue-brief/public-health-in-puerto-rico-after-hurricane-maria/>.

²²⁶ *Ibid.*

²²⁷ Carmen Heredia Rodriguez, "Puerto Rico's Water System Stutters Back to Normal," *Scientific American*, Jun. 14, 2018, <https://www.scientificamerican.com/article/puerto-ricos-water-system-stutters-back-to-normal/>.

²²⁸ The Washington Post-Kaiser Family Foundation, *Survey of Puerto Rico Residents*, Sept. 2018, <https://s3.documentcloud.org/documents/4872895/Washington-Post-Kaiser-Family-Foundation-Puerto.pdf>.

²²⁹ FCC, *2017 Atlantic Hurricane Season Impact on Communications: Report and Recommendations*, Public Safety Docket No. 17-344, Aug. 2018, <https://www.fcc.gov/document/2017-atlantic-hurricane-season-report-impact-communications>, p. 16.

²³⁰ *Ibid.*, at 6 and 16.

²³¹ *Ibid.*

²³² Sarah Chaney, "What Puerto Rico's Job Market Looks Like a Year After Hurricane María," *The Wall Street Journal*, Oct. 23, 2018, <https://www.wsj.com/articles/what-puerto-ricos-job-market-looks-like-a-year-after-hurricane-maria-1540287364>.

²³³ *Ibid.*

²³⁴ Adrian Campo-Flores and Andrew Scurria, "A Year After María, Puerto Rico Is Pushed to Precipice," *The Wall Street Journal*, Sept. 20, 2018, <https://www.wsj.com/articles/a-year-after-maria-puerto-rico-is-pushed-to-precipice-1537435802>.

approximately 35,000 jobs were lost.²³⁵ Furthermore, Moody's estimated that María caused approximately \$80 billion in damages to the Island's already withered capital stock and at least \$25 billion in lost output, which adversely affected business and household balance sheets.²³⁶

At the time María hit, the Puerto Rican educational system consisted of approximately 1,113 public primary and secondary schools.²³⁷ As of November 6, 2017, 598 public schools had yet to reopen and 200 did not have water service restored.²³⁸ By September 2018, approximately 245 of the Island's public schools were still closed.²³⁹ Some were irreparably damaged by María, but many others remain shuttered because teachers and students had fled the Island, with around 42,000 school children leaving Puerto Rico with their families.²⁴⁰ The storm also had a devastating impact on many of the territory's women. Five of the seven domestic violence shelters in Puerto Rico closed because of infrastructure damage, lack of electricity, and the absence of support from the central government. Police officers, who were needed to focus mostly on traffic and supplies, were not available for women in need to report violent situations in their homes.²⁴¹

Overview of Potential Civil Rights Issues

Summary of Testimony Received by the Commission

Throughout 2020, the Texas State Advisory Committee (Texas SAC) to the U.S. Commission on Civil Rights held a series of briefings on the government's response to hurricane disasters in Texas.²⁴² The Texas SAC reported on inequities in the federal government's response to Hurricane Harvey in the Houston area, including disparities in the progress of recovery and rebuilding efforts among Black, Latinx, and White families.²⁴³ The Texas SAC also identified systemic issues that exacerbated the disparities, such as Black and Latinx families in Harris County experiencing flooding at higher rates than White families because of historical

²³⁵ Sergio Marxuach, Policy Director, Center for a New Economy, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm'n on Civil Rights, Dec. 10, 2021, at 2 (herein Marxuach Statement).

²³⁶ Marxuach Statement, at 2.

²³⁷ Ricardo Rossello, Governor of Puerto Rico, *Request for Federal Assistance for Disaster Recovery: Build Back Better Puerto Rico*, Nov. 2017, http://nlihc.org/sites/default/files/Build_Back_Better_PR_Request_94B.pdf, p. 69.

²³⁸ Ibid.

²³⁹ Peter S. Green, "Puerto Rico's grim prognosis: The island may never recover," *CBS News*, Sept. 21, 2018, <https://www.cbsnews.com/news/puerto-rico-hurricane-maria-by-the-numbers-cbsn-originals/>.

²⁴⁰ Ibid.

²⁴¹ Tania Rosario-Méndez, Executive Director, Taller Salud, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm'n on Civil Rights, Dec. 10, 2021, at 3 (herein Rosario-Méndez Statement).

²⁴² Texas Advisory Cmte. To the U.S. Comm'n on Civil Rights, *Government Response to Hurricane Disasters: An Advisory Memorandum of the Texas Advisory Committee to the U.S. Commission on Civil Rights* (Mar. 2021) <https://www.usccr.gov/files/2021/05-19-TX-SAC-Government-Response-to-Hurricane-Disasters-in-Texas.pdf> (herein *Texas SAC Advisory Memo*). Full memorandum is available as Appendix D of this report.

²⁴³ Ibid, at 9.

segregation and redlining that led to Black and Latinx families living in lower lying areas.²⁴⁴ In summary, the Texas SAC found that “[e]xperiencing a natural disaster, like Hurricane Harvey, exacerbates pre-existing systemic inequities.”²⁴⁵

Testimony gathered by the Texas SAC also highlighted the barriers that people with disabilities face when seeking FEMA assistance in the aftermath of a natural disaster. For example, Stephanie Duke, an attorney and Equal Rights Justice Works Disaster Relief Fellow, indicated that FEMA’s utilization of one habitability standard assumes that all applicants can live in the same type of environment without risk or injury, which is not true for individuals with disabilities or underlying health conditions.²⁴⁶ The Texas SAC also noted that people with disabilities had difficulties in accessing specialized support in the aftermath of Harvey, describing how a hotline for people with disabilities administered by the Houston mayor’s office was “overrun with requests from survivors, some of whom waited hours or even days before receiving helpful information or being evacuated.”²⁴⁷

To further inform the Commission’s study of the federal government’s response to Hurricanes Harvey and María, the Commission held a series of briefings in 2021.²⁴⁸ Throughout the three briefings, the Commission received testimony from a variety of panelists and members of the public about civil rights issues in the federal government’s response to Harvey and María.²⁴⁹ For example, at the June 2021 briefing, Kira Romero-Craft, Director of the Southeast Region of the LatinoJustice Puerto Rican Legal Defense stated that Puerto Ricans faced housing discrimination and disparities in federal funding in the aftermath of María.²⁵⁰ Additionally, Andres Gallegos, Chairman of the National Council on Disability, testified that “[p]eople with disabilities were not included in emergency planning and were excluded from accessing much of the disaster relief provided in their aftermath.”²⁵¹ Nicole Roy, Project Coordinator for the Salvation Army in Puerto Rico, discussed how a lack of cultural competency of federal aid workers led to barriers and delays in Puerto Ricans’ ability to access emergency aid.²⁵² Notably, multiple panelists testified that decades of underinvestment and mismanagement leading to economic and structural

²⁴⁴ Ibid.

²⁴⁵ Ibid, at 12.

²⁴⁶ Stephanie Duke, Attorney/Equal Justice Works Disaster Relief Fellow, Disability Rights Texas, Written Statement for the *Government Response to Hurricane Disasters Briefing* before the Tex. State Advisory Cmte. To the U.S. Comm’n on Civil Rights, Nov. 12, 2020 at 1-2 [on file]; see also, *infra* notes 1298-1300.

²⁴⁷ *Texas SAC Advisory Memo* at 10.

²⁴⁸ See U.S. Comm’n on Civil Rights, Civil Rights and Protections in the Federal Response to Hurricanes María and Harvey, <https://www.usccr.gov/pubs/briefing-reports/2021-06-25-Civil-Rights-and-Protections-in-the-Federal-Response-to-Hurricanes-Maria-and-Harvey.php> (last accessed Aug. 17, 2021) (links to recordings, transcripts, and written testimony from briefings).

²⁴⁹ See generally *ibid.*

²⁵⁰ Kira Romero-Craft, Director, Southeast Region, LatinoJustice Puerto Rican Legal Defense and Education Fund, testimony, *Civil Rights and Protections in the Federal Response to Hurricanes María and Harvey Briefing Before the U.S. Comm’n on Civil Rights*, Jun. 25, 2021, transcript, pp. 84-86 (herein cited as *DC Briefing*).

²⁵¹ Andres Gallegos, Chairman, Nat’l Council on Disability, testimony, *DC Briefing*, p. 87.

²⁵² See Nicole Roy, Project Coordinator, Salvation Army, testimony, *DC Briefing*, pp. 94-95.

vulnerabilities in Puerto Rico, as well as disparities in the timing, amount, and distribution of emergency relief funds, caused the Island to suffer disproportionately compared to U.S. states affected by similar disasters.²⁵³

At the October 2021 briefing on Hurricane Harvey in Texas, the Commission heard from state-level government employees, local nonprofit organizations, and researchers that study the public health and social aspects of disasters.²⁵⁴ Shao-Chee Sim, Vice President of Research, Innovation and Evaluation at Episcopal Health Foundation, described a survey conducted to understand the experiences and needs of Texans in the affected region.²⁵⁵ Brittany Perrigue-Gomez, Disaster Benefits Team Manager of Texas RioGrande Legal Aid, discussed her organization's difficulties in assisting approximately 2,900 Harvey survivors with FEMA applications and appeals following denials for assistance.²⁵⁶ The President of the Emergency Management Association of Texas, Francisco Sánchez, Jr., spoke to the difficulty of the aid application process, as well as the cost-prohibitive nature of flood insurance for many Texans.²⁵⁷

At the December 2021 briefing on Hurricane María in Puerto Rico, the Commission heard from Secretary of State Omar Marrero on how Puerto Rico had to depend heavily on the federal response due to its pre-existing fiscal crisis.²⁵⁸ Diane Yentel, President and CEO of the National Low Income Housing Coalition, discussed key barriers to equitable and comprehensive disaster housing recovery and opportunities to reform FEMA and HUD programs to ensure resources are deployed quickly, equitably, and effectively.²⁵⁹ And multiple panelists testified to the difficulties many survivors experienced in trying to access aid following María.²⁶⁰

²⁵³ See, e.g., Romero-Craft Testimony, *DC Briefing*, p. 84; Gallegos testimony, *DC Briefing*, pp. 88-89; Roy testimony, *DC Briefing*, p. 96.

²⁵⁴ See U.S. Comm'n on Civil Rights, *Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas*, <https://www.usccr.gov/meetings/2021/10-21-civil-rights-implications-disaster-relief-hurricane-harvey-texas> (last accessed Dec. 7, 2021) (links to recordings, transcripts, and written testimony from briefings).

²⁵⁵ Shao-Chee Sim, Vice President, Research, Innovation and Evaluation, Episcopal Health Foundation, testimony, *Texas Briefing*, pp. 105-110.

²⁵⁶ Brittany Perrigue Gomez, Disaster Benefits Team Manager, Texas RioGrande Legal Aid, testimony, *Texas Briefing*, pp. 27-34.

²⁵⁷ Francisco Sánchez, President, Emergency Management Association of Texas, testimony, *Texas Briefing*, pp. 13-20.

²⁵⁸ Hon. Omar J. Marrero, Secretary of State, Commonwealth of Puerto Rico, testimony, *Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing Before the U.S. Comm'n on Civil Rights*, Dec. 10, 2021, transcript, pp. 13-20 (herein cited as *Puerto Rico Briefing*).

²⁵⁹ Diane Yentel, President and CEO, National Low Income Housing Coalition, testimony, *Puerto Rico Briefing*, pp. 46-51.

²⁶⁰ Amaris Torres Rivera, Executive Director, Fundación Fondo de Acceso a la Justicia, testimony, *Puerto Rico Briefing*, pp. 126-131; Ariadna Godreau Aubert, Executive Director, Ayuda Legal Puerto Rico (ALPR), testimony, *Puerto Rico Briefing*, pp. 96-102.

Summary of FEMA’s Responses to the Commission’s Inquiries

As part of the Commission’s study of Hurricanes Harvey and María, the Commission sent a list of questions and document requests to FEMA that, in part, asked about FEMA’s understanding of civil rights issues that arose before, during, and after the storms. With the understanding that, as FEMA wrote in testimony to the Commission, “[d]isaster response is first and foremost a local effort, with local police, fire and other first responders, as well as voluntary agencies addressing immediate needs when disaster strikes,” the federal government plays an important role in responding to disasters that are beyond the capabilities of local and state governments.²⁶¹ As discussed herein, the federal government, federal contractors, and funding recipients must adhere to federal civil rights protections, including recipients of federal disaster assistance.²⁶²

In response to the Commission’s information and document requests, FEMA described several “formal and informal” training programs the agency has implemented to inform “FEMA personnel, government entities from the state, local, tribal and territorial level, Federal partners, private non-profit entities, disability organizations and stakeholders, and FEMA program recipients” of its civil rights obligations under federal law.²⁶³ The responses to these requests are discussed throughout Chapter 3 and FEMA’s programs and the agency’s ongoing efforts are discussed in-depth in Chapter 4.

Overview of Applicable Federal Civil Rights Protections

The Stafford Act

FEMA is the federal agency charged with implementing and carrying out major disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Act of 1988 (Stafford Act).²⁶⁴ The Stafford Act amended the Disaster Relief Act of 1974, and President Carter’s 1979 Executive Order 12127 merged many of the separate disaster-related responsibilities of different agencies into the Federal Emergency Management Agency.²⁶⁵

Congress enacted the Stafford Act to provide “assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from [major] disasters.”²⁶⁶ The Act is “designed to assist the efforts of States affected by the major disasters in expediting the rendering of aid, assistance, and emergency

²⁶¹ Joint FEMA Statement, at 3.

²⁶² See, *infra* notes 265-364.

²⁶³ FEMA Response to USCCR Interrogatory No. 8 at 6 [on file].

²⁶⁴ Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, 88 Stat. 143, (codified as 42 U.S.C. § 5121 *et seq.*; see *Santos v. Fed. Emergency Mgmt. Agency*, 327 F. Supp. 3d 328, 333 (D. Mass. 2018).

²⁶⁵ See FEMA, “About Us,” Jun. 2019, <https://www.fema.gov/about>.

²⁶⁶ 42 U.S.C. § 5121(b).

services, and the reconstruction and rehabilitation of devastated areas...”²⁶⁷ It is triggered when the Governor of an affected State or Territory (or the Mayor of the District of Columbia) or a Tribal government determines that the local resources are insufficient to respond to a disaster and requests federal assistance; based on this request, the President may declare that a major disaster or emergency exists.²⁶⁸ If the President does so, they retain the discretion to determine and designate the type of assistance available and the areas eligible to receive assistance.²⁶⁹ In other words, the President may authorize various forms of “Public Assistance” directed at state and local governments to assist them in performing work to prevent immediate threats to life, as well as various forms of “Individual Assistance” that provide assistance directly to individuals impacted by a disaster event.²⁷⁰

The Act also grants federal assistance after the President declares a state, tribe, or territory as a disaster area.²⁷¹ Under Section 308 “the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.”²⁷²

Courts have found that this provision imposes an affirmative duty on FEMA to provide assistance without discrimination and provides an aggrieved individual with a right of action against the agency.²⁷³ The language of Section 308 is mandatory: “the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner...”²⁷⁴ This mandatory language is not an anomaly because, as discussed before, other provisions of the Act are discretionary, such as “the President *may* direct” and “federal agencies *may*...provide assistance...”²⁷⁵

Section 308 requires FEMA, as well as public organizations and government agencies receiving assistance from FEMA, to comply with the nondiscrimination provision of the Act.²⁷⁶ Section

²⁶⁷ *Id.* § 5121(a).

²⁶⁸ *Id.* § 5170; see also Elizabeth M. Webster, *FEMA’s Individuals and Households Program (IHP)*, Feb. 14, 2022, <https://crsreports.congress.gov/product/pdf/IF/IF12049/2>.

²⁶⁹ *Id.*

²⁷⁰ *Santos v. Fed. Emergency Mgmt. Agency*, 327 F. Supp. 3d 328, 333 (D. Mass. 2018); see also Elizabeth M. Webster, *FEMA’s Individuals and Households Program (IHP)*, Feb. 14, 2022, <https://crsreports.congress.gov/product/pdf/IF/IF12049/2> (noting that one form of IA is the Individuals and Households Program (IHP), which helps address the disaster-caused needs of individuals, with and that there are two categories of IHP assistance: Housing Assistance and Other Needs Assistance (ONA)).

²⁷¹ 42 U.S.C. § 5170.

²⁷² 42 U.S.C. § 5151(a).

²⁷³ *Laday v. Ramada Plaza Hotel Laguardia*, No. 07-CV-0450 (BMC), 2007 WL 526613, at *2 (E.D.N.Y. Feb. 13, 2007). See *McWaters*, 436 F. Supp. 2d at 824.

²⁷⁴ *Watson v. Fed. Emergency Mgmt. Agency*, No. CIV.A.H-06-1709, 2006 WL 5249703, at *3 (S.D. Tex. May 30, 2006); 42 U.S.C. § 5151(a) (emphasis added).

²⁷⁵ *Id.*; § 5170a(1), 5170b(a) (emphasis added).

²⁷⁶ 44 C.F.R. § 206.11(c)

308 also mandated that the President issue regulations for the guidance of personnel carrying out Federal assistance functions at the site of major disasters, that include provisions for ensuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.²⁷⁷

Pursuant to the above mandate, FEMA issued 44 C.F.R. § 206.11. Subsection (a) of the aforementioned regulation notes that Federal financial assistance to the States or their political subdivisions is conditioned on full compliance with 44 CFR part 7, and subsection (b) notes that all personnel carrying out Federal major disaster or emergency assistance functions, including the distribution of supplies, the processing of the applications, and other relief and assistance activities, shall perform their work in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status. Courts have recognized individual causes of action based on the aforementioned regulation.²⁷⁸ Section 309 of the Stafford Act also states that agreements with relief organizations shall include non-discrimination provisions.²⁷⁹

FEMA has regulations regarding nondiscrimination in federally assisted and conducted programs, prohibiting discrimination based on race, color, or national origin in programs or activities receiving federal financial assistance from FEMA.²⁸⁰ 44 CFR § 7.5(b) notes that

a recipient... may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.²⁸¹

While federal laws, executive orders, and agency regulations protect applicants seeking disaster relief, individuals may still face various challenges including long wait times and understanding how to file an appropriate claim under the Stafford Act. For example, in *McWaters v. FEMA*,

²⁷⁷ 42 U.S.C. § 5151(a); *see also*, Post Katrina Emergency Management Reform Act, S. 3721, 109th Cong., § 221 (2006).

²⁷⁸ *McWaters v. Federal Emergency Management Agency*, 436 F.Supp.2d 802, 823–24 (E.D.La.,2006) (noting that “Plaintiffs allege that FEMA has violated certain provisions of both the Stafford Act and the Code of Federal Regulations due to its delays in provision and denials of Temporary Housing Assistance... the question becomes, then, whether the evidence presented reveals that FEMA, in administering its disaster assistance programs, has somehow impermissibly discriminated against applicants.”)

²⁷⁹ 42 U.S.C. § 5152(b).

²⁸⁰ 44 C.F.R. Subchapter A, Part 7; *see also* 44 CFR § 206.11, “nondiscrimination in disaster assistance,” which governs financial assistance to states and municipalities and incorporates 44 C.F.R. Subchapter A, Part 7.

²⁸¹ *Id.*

applicants seeking disaster relief following Hurricane Katrina brought suit against FEMA alleging “FEMA’s failure to provide and unreasonable delay of Housing Assistance [was] unlawful.”²⁸² Over 84,470 individuals applied for short-term lodging, all of which remained pending after three months.²⁸³ As the Stafford Act does not explicitly provide FEMA with a timetable to act on pending applications, the United States District Court for the Eastern District of Louisiana also declined to issue one, even though the court recognized that a majority of the people affected by the deadline for vacating hotel rooms and securing short-term housing were those with few economic resources.²⁸⁴

Additionally, unless a disaster has been declared, applicants who choose to bring a private cause of action under the Stafford Act may struggle to advance a successful claim. Individuals are not eligible to receive benefits under the Act until the President declares an emergency or disaster, triggering the protections provided by the Stafford Act.²⁸⁵

Moreover, government agencies, actors, and volunteers fulfilling their obligations under the Stafford Act, such as determining eligibility for Other Needs Assistance (ONA) like moving and storage or Individual Housing Assistance (IHA) assistance like rental or home repair assistance are protected under the “discretionary function” provision of 42 U.S.C. § 5148.²⁸⁶ However, as the Court in *Keita v. FEMA*,²⁸⁷ reiterated

whatever discretion has been vested in FEMA to deny or award [Individual Assistance] IA grants, it does not extend so far as to permit those decisions to be based on an unconstitutional motivation... this provision imposes an affirmative duty on FEMA to provide assistance without discrimination and provides an aggrieved individual with a right of action against FEMA.²⁸⁸

Obviously, in short, FEMA has no discretion to discriminate. Equally obvious, “[h]owever, the litigant bears the burden of establishing that FEMA, in administering a disaster assistance program, has somehow impermissibly discriminated against [him].”²⁸⁹

²⁸² *McWaters v. Fed. Emergency Mgmt. Agency*, 408 F. Supp. 2d 221, 225-26 (E.D. La 2005).

²⁸³ *Id.* at 227.

²⁸⁴ *Id.* at 232-233.

²⁸⁵ 42 U.S.C. § 5170.

²⁸⁶ *Id.* § 5148; see also *Keita v. FEMA*, 2021 WL 3549876, at *6 (E.D.N.Y., 2021) (holding that the granting of IA grants and relevant eligibility determinations are fairly characterized as agency actions committed to FEMA's discretion and thus claims that FEMA violated the Stafford Act in determining that he was ineligible for IA grants is barred by the doctrine of sovereign immunity).

²⁸⁷ *Keita v. FEMA*, 2021 WL 3549876, at *6-7 (E.D.N.Y., 2021).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

Other Relevant Federal Civil Rights Protections

Several federal laws, executive orders, and agency regulations outline the civil rights protections available to individuals seeking and receiving disaster relief from FEMA. Title VI of the Civil Rights Act of 1964 (Title VI), the Rehabilitation Act of 1973 (Rehabilitation Act), the Age Discrimination Act of 1975 (Age Discrimination Act), and Title IX of the Education Amendments of 1972 (Title IX) form the basis of DHS and FEMA’s civil rights responsibilities to the public.

Of relevance to the Commission’s study, Section 601 of Title VI of the Civil Rights Act of 1964 states that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”²⁹⁰ As the Supreme Court has held Section 601 of Title VI “prohibits only intentional discrimination.”²⁹¹ Title VI also requires “that a litigant plead facts in support of intentional discrimination.”²⁹²

Regulation 44 C.F.R. § 7.5(b), which FEMA promulgated pursuant to Title VI, notes that

a recipient... may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.²⁹³

However, 44 C.F.R. § 7.4 notes that this regulation does not apply to, among others, any assistance to any individual who is the ultimate beneficiary. As of the writing of this report, research does not indicate any federal or state court cases citing to 44 CFR Subpart A. Moreover, 44 C.F.R. § 7.5 does not contain the words “impact” or “disparate impact,” however Federal courts have held that the exact same regulatory language in the Department of Education’s Title VI regulation,²⁹⁴ does constitute a “disparate impact” legal standard or theory of

²⁹⁰ Civil Rights Act of 1974, 42 U.S.C. § 2000d.

²⁹¹ *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001).

²⁹² *People’s Workshop, Inc. v. Federal Emergency Management Agency*, 2019 WL 1140196, at *6 (M.D.La., 2019) citing to *Price ex rel. Price v. La. Dep’t of Educ.*, 329 F. App’x 559, 561 (5th Cir. 2009).

²⁹³ 44 C.F.R. § 7.5(b); *see also*, 6 C.F.R. §§ 21.1-21.21.

²⁹⁴ 34 C.F.R. § 100.3(b)(2).

discrimination.²⁹⁵ Similarly, the Department of Transportation’s Title VI regulations,²⁹⁶ likewise contain the above noted language regarding disparate “effect” on impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.²⁹⁷ Thus, FEMA has “disparate impact” regulations in 44 CFR Subpart A, that proscribe activities that have a disparate impact on a racial group, however, these regulations do not provide for a private right of action based on disparate impact for applicants of FEMA assistance.²⁹⁸

In 2000, President Bill Clinton issued Executive Order 13166 (EO 13166), titled “Improving Access to Services for Persons with Limited English Proficiency.”²⁹⁹ EO 13166 clarified that national origin as defined in Title VI covers individuals with limited English proficiency from discrimination by recipients of federal financial assistance.³⁰⁰ Additionally, the United States District Court for the District of Arizona in *United States v. Maricopa County*, Arizona explained that “longstanding case law, federal regulations and agency interpretation of those regulations hold language-based discrimination constitutes a form of national origin discrimination under Title VI.”³⁰¹ However, Title VI only protects individuals seeking disaster relief from intentional discrimination; there is no private right of action to enforce disparate impact regulations under Title VI.³⁰²

Individuals with disabilities that receive disaster relief under FEMA are likewise protected. Section 504 of the Rehabilitation Act states that:

²⁹⁵ See *Cureton v. National Collegiate Athletic Ass’n*, 198 F.3d 107, 115 (1999) (holding that “the Departments of Health and Human Services and Education have not modified 34 C.F.R. § 100.13 and 45 C.F.R. § 80.13 following enactment of the Restoration Act. Consequently, the regulations, which, unlike Title VI, include disparate impact provisions, by their terms remain program specific;”) See also *Alexander v. Choate*, 469 U.S. 287, 293 (1985) (holding that Title VI itself directly reached only instances of intentional discrimination, but actions having an unjustifiable disparate impact on minorities could be redressed through agency regulations designed to implement the purposes of Title VI had that Congress delegated to the agencies in the first instance the complex determination of what sorts of disparate impacts upon minorities constituted sufficiently significant social problems.”)

²⁹⁶ 49 CFR Part 21: Nondiscrimination in Federally Assisted Program, Effectuation of Title VI of the Civil Rights Act of 1964.

²⁹⁷ See DOT’s publication “Title VI- Intentional Discrimination and Disparate Impact,” pp. 13-19, discussing how 49 C.F.R. § 21.5(b) prohibits disparate impact discrimination, <https://www.fhwa.dot.gov/civilrights/programs/docs/Title%20VI%20-%20Intentional%20Discrimination%20and%20Disparate%20Impact.pdf> (noting that “Recipients are responsible for ensuring non-discrimination regarding disparate impact. Persons may file complaints with federal agencies against recipients. Federal agencies may initiate compliance reviews; and Federal agencies may find recipients non-compliant, resulting in potential loss of federal funding.)

²⁹⁸ See *Franks v. Ross*, 293 F.Supp.2d 599 (E.D.N.C.,2003) (holding that Title VI provision which prohibited discrimination against any person under program receiving federal financial assistance provided private right of action for town residents to state claim of intentional discrimination against county.)

²⁹⁹ Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 16, 2020).

³⁰⁰ *Id.*

³⁰¹ *United States v. Maricopa Cnty., Ariz.*, 915 F. Supp. 2d 1073, 1079 (D. Ariz. 2012); See 43 U.S.C. 2000d.

³⁰² See *Alexander v. Sandoval*, 532 U.S. 275 (2001).

No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.³⁰³

Further, the Act defines a “[qualified] individual with a disability”³⁰⁴ as anyone who “has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment”³⁰⁵ and who “can benefit in terms of an employment outcome from vocational rehabilitation services...”³⁰⁶ Unlike Title VI which was enacted to address intentional discrimination of racial minorities, Section 504 was enacted to remedy “benign neglect” suffered by persons with disabilities.³⁰⁷ Therefore, Section 504 was “enacted both to eliminate invidious discrimination and increase access for” people with disabilities.³⁰⁸ Notably, Section 504 contains a much stronger affirmative action requirement - a recipient’s failure to use federal funds to make “special efforts” or to take “affirmative action” to accommodate the needs of disabled individuals constitutes a violation of Section 504.³⁰⁹ While Title VI only protects against intentional discrimination,³¹⁰ Section 504 protects against disparate impact as well as intentional discrimination, although it still requires the plaintiff to show there was an intent to discriminate or “with deliberate indifference [the public entity] fails to provide meaningful access or a reasonable accommodation to disabled persons.”³¹¹ Under Section 504, an individual with disabilities can file a complaint with an agency that fails to affirmatively eliminate discrimination on the basis of disability through its regulations.³¹²

Section 508 was added to the Rehabilitation Act of 1973 in 1986.³¹³ The original version included non-binding guidelines for technology accessibility.³¹⁴ In 1998, Section 508 was amended to create standards for federal departments and agencies including complaint

³⁰³ Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 394 (codified at 29 U.S.C. § 794(a)); 44 C.F.R. Part 16 (FEMA’s Section 504 regulations); 6 C.F.R. Part 15 (DHS’ Section 504 regulations).

³⁰⁴ 29 U.S.C. § 705(20)

³⁰⁵ *Id.* at § 705(20)(i).

³⁰⁶ *Id.* at § 705(20)(ii).

³⁰⁷ *Nat’l Ass’n for the Advancement of Colored People v. Wilmington Med. Ctr, Inc.*, 491 F. Supp. 290, 317 (D. Del. 1980).

³⁰⁸ *Id.*

³⁰⁹ *Id.* at 317 (citing *Llyod v. Reg’l Transp. Auth.*, 548 F. 2d 1277).

³¹⁰ *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001).

³¹¹ *A.G. v. Paradise Valley Unified Sch. Dist. No. 69*, 815 F. 3d 1195, 1204 (9th Cir. 2016) citing *Mark H. v. Lemahieu*, 513 F.3d 922, 938 (9th Cir. 2008)

³¹² See 29 U.S.C. § 794 and FEMA’s regulation, 44 CFR § 16.170; see also, for example, Health and Human Services regulation, 45 CFR § 85.61.

³¹³ United States Dep’t of Education, *Q & A Title IV—Rehabilitation Act Amendments of 1998*, Dep’t of Justice, <https://www.justice.gov/sites/default/files/crt/legacy/2009/02/18/deptofed.pdf> (last visited Jun. 21, 2021).

³¹⁴ *Id.*

procedures and reporting requirements.³¹⁵ As amended in 1998, Section 508 of the Rehabilitation Act states, in part:

When developing, procuring, maintaining, or using electronic and information technology, each Federal department or agency...shall ensure...that electronic and information technology allows... individuals with disabilities who are members of the public seeking information or services from the Federal department or agency to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.³¹⁶

Under Section 508, federal departments or agencies must provide access to information or services for individuals with disabilities unless providing such services would impose an undue burden on the agency.³¹⁷ Even if providing these services would create an undue burden on the agency or department, it must still provide the individual with a disability with an alternative method to access the information and data.³¹⁸ In *Vande Zande v. State of Wisconsin Department of Administration*, the Seventh Circuit defined undue burden as excessive costs “in relation either to the benefits of the accommodation or to the [agency’s] financial survival or health.”³¹⁹ The law applies to “software and hardware with user interface, all public facing electronic content, and to non-public facing electronic content that is ‘agency official communication or business’ along with support services and documentation.”³²⁰ The Architectural and Transportation Barriers Compliance Board is responsible for periodically reviewing and updating the electronic and technology standards³²¹ and federal agencies are required to set standards adhering to Section 508 and must periodically update and review such standards to reflect changes or advances in electronic and information technology.³²² Under Section 508(f),³²³ any individual with a disability is entitled to file a complaint against the federal agency or department alleging violation of the Act because subsection (f) “clearly creat[es] an administrative procedure for challenging [government action].”³²⁴

³¹⁵ *IT Accessibility Laws and Policies*, Section508.gov, <https://www.section508.gov/manage/laws-and-policies> (last visited Jun. 15, 2021).

³¹⁶ 29 U.S.C. § 794d(a)(1)(A).

³¹⁷ *Id.*

³¹⁸ *Id.* § 794d(a)(1)(B).

³¹⁹ *Vande Zande v. State of Wis. Dep’t of Admin.*, 44 F. 3d 538, 543 (7th Cir. 1995).

³²⁰ FEMA, “508 Overview,” <https://www.fema.gov/about/offices/information-technology/508#> (last visited Jun. 21, 2021).

³²¹ 29 U.S.C. § 794d(a)(2)(B)

³²² 29 U.S.C. § 794d (a)(2)(B).

³²³ *Id.* § 794d (f).

³²⁴ *Werwie v. Vought*, No. 19-cv-3713 2020 WL 6781220, at *3 (D.D.C. Nov. 18, 2020) (citing *Avocado Plus, Inc. v. Veneman*, 370 F. 3d 1243, 1247 (D. D. Cir. 2004)).

As explained above, while the Rehabilitation Act prohibits discrimination on the basis of disability in federal programs and activities, such as those administered by FEMA, while the Americans with Disabilities Act, specifically, Title II of the Act, applies to actions by public entities including state and local governments.³²⁵ Title II of the ADA does not apply to the Executive Branch of the federal government.³²⁶ While the ADA provides analogous protections to the Rehabilitation Act,³²⁷ but only to individuals seeking disaster relief directly from state or local governments.³²⁸ Individuals may be entitled to protections via causes of actions against states, local governments, and other entities receiving federal aid under the ADA if FEMA distributes funds to state or local governments, which in turn, disburses the funds to members of the public.³²⁹ In such instances, the courts must “construe the ADA to grant at least as much protection as the regulations implementing the Rehabilitation Act”³³⁰ because “[t]he ADA definition is drawn almost verbatim from definitions applicable to [Section] § 504 of the Rehabilitation Act of 1973.”³³¹

Title IX of the Education Amendments of 1972 protects individuals on the basis of sex and allows individuals to file complaints of discrimination with federal agencies³³² such as FEMA.³³³ Title IX states that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”³³⁴ In *Cannon v. University of Chicago*, the United States Supreme Court held that individuals can bring private causes of action under the statute even though the statute does not expressly state that individual private causes of action are permitted.³³⁵ In *Cannon*, the plaintiff sued the University of Chicago,

³²⁵ *Innovative Health Sys., Inc. v. City of White Plains*, 931 F. Supp. 222, 232 (S.D.N.Y. 1996); Congressional Research Services, *The Americans with Disabilities Act (ADA); Statutory Language and Recent Issues*, Updated June 12, 2001, p. 20, https://www.everycrsreport.com/files/20010612_98-921_05a486245eb228bab5651ad3cb2a6be659f505b2.pdf (“Public entity” is defined as state and local governments, any department or other instrumentality of a state or local government and certain transportation authorities.)

³²⁶ Congressional Research Services, *The Americans with Disabilities Act (ADA); Statutory Language and Recent Issues*, Updated June 12, 2001, p. 20, https://www.everycrsreport.com/files/20010612_98-921_05a486245eb228bab5651ad3cb2a6be659f505b2.pdf (“The ADA does not apply to the executive branch of the federal government; the executive branch and the U.S. Postal Service are covered by section 504 of the Rehabilitation Act of 1973.”)

³²⁷ *Innovative Health Sys., Inc.*, 931 F. Supp. at 236 (“Title II’s enforcement provision was patterned after § 794a of the Rehabilitation Act. It extends all rights, remedies and procedures available under § 794a of the Rehabilitation Act to Title II...”)

³²⁸ *Innovative Health Sys., Inc.*, 931 F. Supp. at 232.

³²⁹ *Frame v. City of Arlington*, 657 F.3d 215, 224 (2011) (“there is no question that Title II and § 504 are enforceable through an implied private right of action”) citing to *United States v. Georgia*, 546 U.S. 151, 154 (2006) (“Title II authorizes suits by private citizens for money damages against public entities that violate [Title II].”)

³³⁰ *Id.*

³³¹ Compare 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act) with 42 U.S.C. § 12132 (Title II of the ADA).

³³² *Cannon v. Univ. of Chicago*, 441 U.S. 667, 677 (1979).

³³³ 6 C.F.R. Part 17.

³³⁴ Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (a).

³³⁵ *Univ. of Chicago*, 441 U.S. at 677.

alleging sex discrimination under Title IX.³³⁶ The Court recognized that although the statute was silent on whether an individual could bring a claim under the statute, it provided an implied right to because it was modeled after Title VI.³³⁷ Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title IX of the Education Amendments of 1972 have been codified into FEMA’s Code of Federal Regulations at 44 C.F.R §§ 7, 16, and 19 respectively.³³⁸

Individuals are also protected against discrimination based on age under the Age Discrimination Act of 1975. The Age Discrimination Act states that “[n]o person in the United States, shall, on the basis of age, be excluded from participation in, be denied of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.”³³⁹ However, as noted in the exemptions to the statute, not all federally funded activities or programs are obligated to comply with the Age Discrimination Act.³⁴⁰

Title VI, Title IX, the Rehabilitation Act, and the Age Discrimination Act all include provisions that direct federal agencies to enact regulations to carry out their federal civil rights statutory mandates.³⁴¹

In 1994, President Bill Clinton issued Executive Order 12898 (EO 12898), titled “Environmental Justice in Minority Populations and Low-Income Populations.”³⁴² EO 12898 requires:

[E]ach Federal agency [to] make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.³⁴³

EO 12898 protects minority individuals by mandating federal agencies to increase public participation and access to information,³⁴⁴ though Executive Orders do not provide a private right of action to citizens. Individuals may submit recommendations to federal agencies,³⁴⁵ to include FEMA. Additionally, federal agencies must “translate crucial public documents, notices,

³³⁶ *Id.* at 680.

³³⁷ *Id.* at 694-96.

³³⁸ 44 C.F.R. § 7.3, 16.101, 19.100 (2020).

³³⁹ Age Discrimination Act of 1975 42 U.S.C. Chapter 76.

³⁴⁰ *Id.* § 6103 (b).

³⁴¹ *See* Civil Rights Act of 1974, 42 U.S.C. § 2000d. *See also* Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681; 29 U.S.C. § 794; Age Discrimination Act of 1975, 45 U.S.C. § 6102.

³⁴² Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 11, 1994).

³⁴³ *Id.* § 1-101.

³⁴⁴ *Id.* § 5-5.

³⁴⁵ *Id.*

and hearings...for limited English-speaking populations [LEP]” and ensure that individuals, regardless of English proficiency, can readily access concise and understandable public documents related to human health or the environment.³⁴⁶ This type of information and the ability to effectively communicate to LEP Individuals is critical during times of domestic disaster response situations.

Moreover, the Equal Protection Clause of the Fourteenth Amendment states that “[n]o state shall...deny to any person within its jurisdiction the equal protections of the laws,” thereby guaranteeing equal protection of the law by the states.³⁴⁷ While the Fifth Amendment does not contain an Equal Protection Clause, it does contain a Due Process Clause.³⁴⁸ The Supreme Court has stated that the equal protection analysis is “the same” under both the Fifth and Fourteenth Amendments,³⁴⁹ thereby making the concepts of equal protection and due process applicable to the Federal government.³⁵⁰ Further, Federal courts have jurisdiction to hear claims alleging violations of the Due Process Clause of the Fifth Amendment when Federal agencies arbitrarily deprive plaintiffs of their entitlement to assistance.³⁵¹ In consequence, the government cannot provide voluntary services in a discriminatory manner. Jurisdiction over claims of discrimination regarding FEMA assistance, alleged violations or discrimination claims are under the Equal Protection Clause of the Fifth Amendment because even though FEMA has discretion to act or not to act, “Congress never intended to allow agencies to determine whether to act in accord with the Constitution, abiding by the Constitution is never discretionary.”³⁵² This is true even though Section 305 of the Stafford Act states that:

³⁴⁶ *Id.*

³⁴⁷ U.S. Const. amend. V, XIV. See Footnote 35 indicating that, according to the decision in *Bolling v. Sharpe*, the Fifth Amendment does not contain an equal protection clause as does the Fourteenth Amendment which applies only to the states, but the concepts of equal protection and due process are not mutually exclusive. See also *Grose v. Napolitano*, No. 1:11-CV-227, 2012 WL 2912742, at *6 (S.D. Miss. July 16, 2012), *aff’d*, 583 F. App’x 334 (5th Cir. 2014) (stating that *Grose* did not have a Fourteenth Amendment claim against the defendant because the Fourteenth Amendment only applies to states actors and not federal actors).

³⁴⁸ *Bolling v. Sharpe*, 74 S.Ct. 693, 694, 347 U.S. 497, 499 (1954).

³⁴⁹ *Buckley v. Valeo*, 424 U.S. 1, 93 (1976) citing to *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975) (noting that the “[e]qual protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment.”)

³⁵⁰ As the Supreme Court explained, “[t]he ‘equal protection of the laws’ is a more explicit safeguard of prohibited unfairness than ‘due process of law,’ and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process.” *Bolling v. Sharpe*, 74 S.Ct. 693, 694, 347 U.S. 497, 499 (1954).

³⁵¹ See *Lockett v. Federal Emergency Management Agency*, 836 F.Supp. 847, 854 (S.D.Fla., 1993).

³⁵² *Coal. Of Fla. Farmworker Organizations, Inc. v. Fed. Emergency Mgmt. Agency*, No. 06-80143-CIV, 2006 WL 8433326, at *4 (S.D. Fla. Nov. 30, 2006) (citing *Lockett v. Fed. Emergency Mgmt. Agency*, 836 F. Supp. 847, 854 (S.D. Fla. 1993)). It must be noted that the Court in 2007 held that the *Coal. Of Fla. Farmworker Organizations, Inc.* case was ripe for adjudication, even though it had stated in its 2006 order that the Court had jurisdiction to consider counts two, three and four and that the Plaintiffs had stated a claim. In counts two and three, the Plaintiffs alleged discrimination based on economic status and nationality as prohibited under the APA and the Stafford Act. 5 U.S.C. § 702; 42 U.S.C. § 5151. In count four, they alleged a violation of the Equal Protection Clause of the Fifth Amendment. *Coal. Of Fla. Farmworker Organizations, Inc. v. Fed. Emergency Mgmt. Agency*, No 06-80143-CIV, 2007 WL 9701987 (S.D. Fla. Aug. 13, 2007).

The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal Government in carrying out the provisions of this Act.³⁵³

The Act, therefore, provides FEMA a form of immunity from judicial review of its actions that are discretionary in nature. Also, the Supreme Court in *Webster v. Doe*, held that the plaintiff's constitutional challenges to the application of an agency rule were entitled to judicial consideration.³⁵⁴ Finally, as one federal court has noted, citing to the Supreme Court, "Puerto Rico is subject to the equal protection guarantees of either the Fifth or the Fourteenth Amendment."³⁵⁵

Further, FEMA's Office of Equal Rights (OER) notes that the Compliance Unit conducts compliance reviews of FEMA and recipients of FEMA-financial assistance to ensure compliance with civil rights obligations, including accessibility and equitable impact and outcomes.³⁵⁶ FEMA's External Civil Rights Division (ECRD)'s official webpage notes that its functions include ensuring non-discrimination and equity in program delivery or activities and ensuring that disaster response and recovery efforts are conducted in compliance with civil rights laws and policies.³⁵⁷

Individuals who believe that their rights discussed above have been violated have 180 days from the date of the alleged discriminatory act to file a written complaint with FEMA's Office of Equal Rights, Civil Rights Section alleging discrimination based on race, color, national origin (including limited English proficiency), disability, sex, religion, or economic status.³⁵⁸ FEMA is required to review and investigate the issues detailed in the complaint and must notify the individual if another agency will proceed with the investigation. Individuals may bring a suit against FEMA in federal court for certain claims based upon FEMA's failure to adequately resolve the issue informally.³⁵⁹

³⁵³ 42 U.S.C. § 5148.

³⁵⁴ *Webster v. Doe*, 486 U.S. 592 (1988).

³⁵⁵ *Zappa v. Cruz*, 30 F.Supp.2d 123, 125 (D.Puerto Rico,1998) (also noting that "the Court understands that the Fifth Amendment may or may not be applicable") citing to *Posadas de Puerto Rico Assoc. v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 331 (1986).

³⁵⁶ FEMA, "External Civil Rights Division," <https://www.fema.gov/about/offices/equal-rights/civil-rights> (accessed Dec. 21, 2021).

³⁵⁷ *Ibid.*

³⁵⁸ *Ibid.*

Individuals may also file a complaint with CRCL if they feel they have been discriminated against in any DHS conducted or assisted program, including FEMA conducted or assisted programs.

U.S. Dep't of Homeland Security Office of Civil Rights and Civil Liberties, Response to Affected Agency Review, May 25, 2022 [on file].

³⁵⁹ *Ibid.*

The Fair Housing Act of 1968,³⁶⁰ which FEMA does not enforce, may grant civil rights protections to survivors of natural disasters and applicants for disaster relief who receive assistance from FEMA in certain situations.³⁶¹ The Fair Housing Act protects individuals against discrimination in the sale or rental of housing on the basis of race, color, religion, sex, familial status, national origin, or disability.³⁶² Specifically, federal courts have implied that recipients of federal disaster relief aid could have disparate impact claims under the Fair Housing Act if the manner in which aid is distributed has a disproportionately negative impact on protected populations. For example, in 2011 the District of Columbia Circuit Court of Appeals decided a case in which plaintiffs alleged that the formula for distributing aid for rebuilding houses in the aftermath of Hurricane Katrina had a disparate impact on Black homeowners.³⁶³ While the Court of Appeals decided that the data the plaintiffs relied upon was insufficient to support their claim of disparate impact, the court did acknowledge the ionizability of disparate impact claims under the Fair Housing Act and noted that 11 circuit courts of appeals have recognized the validity of such claims.³⁶⁴

The civil rights concerns faced by survivors of Hurricanes Harvey and María are discussed in greater detail in Chapter 2, and FEMA's ongoing efforts to mitigate some of these issues are discussed in-depth in Chapter 4.

³⁶⁰ Fair Housing Act, Pub. L. 90-284, 82 Stat. 81, 42 U.S.C. § 3601 *et seq.*

³⁶¹ *Id.* § 3604 (prohibiting discrimination in the sale or rental of housing).

³⁶² *Id.*

³⁶³ *See, Greater New Orleans Fair Hous. Action, Ctr. v. U.S. Dep't of Hous. & Urban Dev.*, 639 F.3d 1078, 1080-84 (D.C. Cir. 2011).

³⁶⁴ *Id.* at 1085; *see also, Tex. Dep't of Hous. & Cmty Affairs v. Inclusive Cmty's Project, Inc.* 576 U.S. 519 (2015) (holding that disparate impact claims are cognizable under the Fair Housing Act).

Chapter 2: Federal Government's Role in Disaster Response

The first federal legislative act regarding federal disaster relief followed a devastating fire in Portsmouth, New Hampshire in December 1802.³⁶⁵ The fire destroyed large portions of the port and the subsequent year, Congress passed the Congressional Act of 1803 that suspended bond payments for merchants for several months to aid in recovery efforts.³⁶⁶ Over a century and a half later, President Carter signed Executive Order 12127 in April 1979 which established the creation of FEMA, and several months later, he signed Executive Order 12148 which gave the agency the dual mission of emergency management and civil defense.³⁶⁷ As discussed in Chapter 1, the Stafford Act further expanded the agency's authorities in 1988 which amended the Disaster Relief Act of 1974.³⁶⁸ This chapter outlines FEMA's role and responsibilities in disaster response, including resources provided before, during, and after a natural disaster, and considerations in providing FEMA aid. It also discusses civil rights concerns regarding disaster response and federal aid provided to survivors.

FEMA's Role and Responsibilities in Disaster Response

When natural disasters strike, they occur on the local level.³⁶⁹ The residents of these towns, cities, and states are directly affected by these disasters. While the local governments maintain control over all assets used in response and recovery efforts, state and federal governments play a significant support role in recovery efforts on the local level.³⁷⁰

After a natural disaster, eight steps first occur at the local level. These include:

1. Acting as the "first provider" of emergency response services
2. Activating the Emergency Operations Center (EOC) and Comprehensive Emergency Management Plan
3. Coordinating the response with public and private organizations and agencies
4. Notifying the State Emergency Management Agency of the situation by regularly submitting Situation Reports (SITREP)
5. Activating necessary local governments and organizations that are signatory to mutual aid compacts
6. Activating response agreements with State and Federal departments or agencies
7. Proclaiming a local state of emergency to authorize:

³⁶⁵ FEMA, "History of FEMA," Updated Jan. 4, 2021, <https://www.fema.gov/about/history>.

³⁶⁶ Ibid.

³⁶⁷ Ibid.

³⁶⁸ See Disaster Relief Act Amendments of 1974, Pub. Law. No. 93-288; see also, FEMA, "Stafford Act, as Amended, and Related Authorities," May 2019, https://www.fema.gov/sites/default/files/2020-03/stafford-act_2019.pdf.

³⁶⁹ FEMA, "Overview of Local, State, and Federal Response to a Disaster: Unit 3 – Disaster Sequence of Events," in *State Disaster Management*, Jan. 2003, <https://training.fema.gov/emiweb/downloads/is208sdmunit3.pdf>.

³⁷⁰ Ibid.

- Using local resources;
 - Expending local funds; and,
 - Waiving the usual bidding process for goods and services.
8. Requesting the State Emergency Management Agency to provide State and/or Federal Assistance.³⁷¹

Many times, depending on the extent of the damage, local governments do not have adequate resources to respond to a disaster and therefore seek assistance from state governments.³⁷² State governments then act as agents for the local jurisdiction if federal disaster assistance is needed, since local governments cannot directly access federal programs.³⁷³

In coordination with the local responses, the state level response includes monitoring the situation, reviewing and evaluating local SITREPS, activating the state EOC, and determining if the situation is beyond state capability and if federal assistance is needed.³⁷⁴ If federal assistance is deemed necessary, the governor proclaims a state of emergency that activates the State Disaster Preparedness Plan and begins the process of requesting federal assistance.³⁷⁵ This can include a request for an “emergency” or “major disaster declaration” under the Stafford Act, as amended, or to Federal agencies under their own authorities from existing or emergency programs, such as the Small Business Administration (SBA) or the Department of Agriculture (USDA).³⁷⁶ The federal response is triggered when the President determines that the disaster is of such severity and magnitude that an effective response is beyond the capabilities of the affected state and local governments, and they declare a major disaster authorizing federal financial and direct assistance.³⁷⁷ The governor of the state where the disaster occurred requests a federal declaration of an emergency or a disaster from the President, and the President either grants or denies the request.³⁷⁸ In the event the President denies a declaration request, the state

³⁷¹ Ibid.

³⁷² Ibid.

³⁷³ Ibid.

³⁷⁴ Ibid.

³⁷⁵ Ibid.

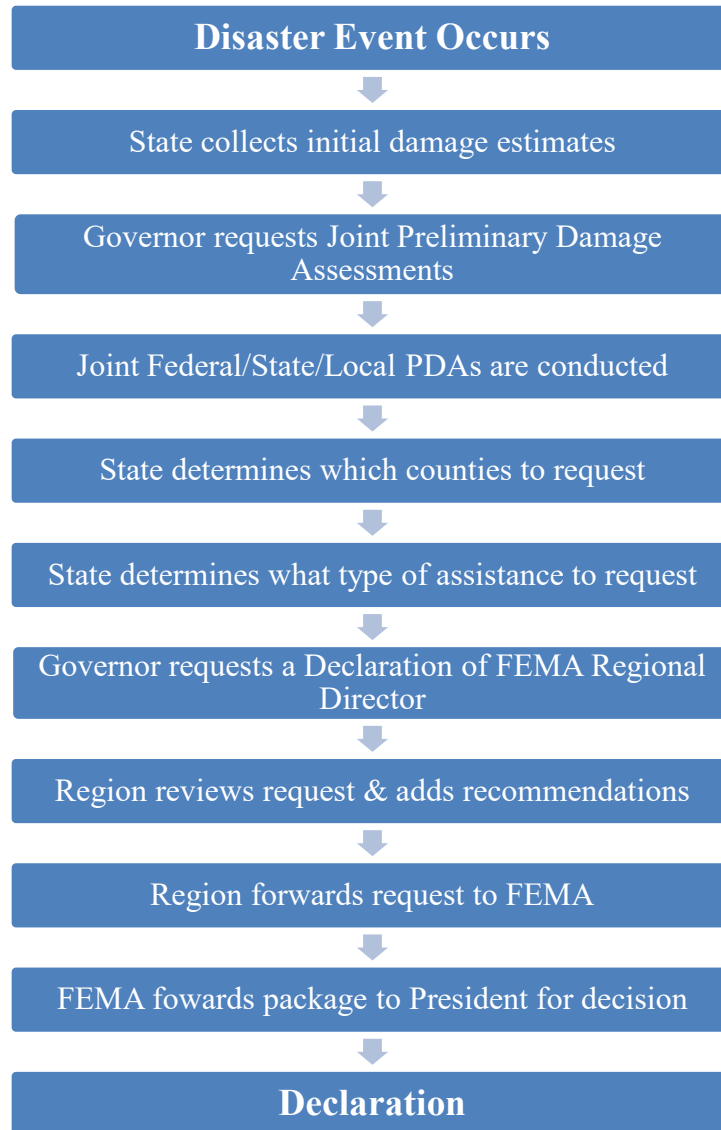
³⁷⁶ Ibid.

³⁷⁷ 42 U.S.C. 5170(a).

³⁷⁸ There are 2 types of disaster declarations: emergency and major disasters. Emergency as defined by the Stafford Act is: “an occasion or instance for which, in the determination of the President, Federal Assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.” Whereas, a major disaster as defined by the Stafford Act is: “any natural catastrophe including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or regardless of cause, any fire, flood, or explosion in any part of the United States which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.” FEMA, “State Disaster Management,” Jan. 2003, <https://www.hSDL.org/?abstract&did=485267>.

can request the President reconsider through an appeals process.³⁷⁹ **Error! Reference source not found.**, below, illustrates these steps.

Figure 2 Flowchart of Federal Disaster Declarations



Source: FEMA, "State Disaster Management," Jan. 2003, <https://www.hsdl.org/?abstract&did=485267>.

Disaster assistance provided by FEMA generally falls under three categories: 1) Individual Assistance is aid provided to individuals and households; 2) Public Assistance provides aid to public and some private nonprofit entities for certain emergency services and the repair or

³⁷⁹ FEMA, "How a Disaster Gets Declared," Sept. 3, 2021, <https://www.fema.gov/disaster/how-declared>.

replacement of disaster-damaged public facilities; 3) Hazard Mitigation Assistance is funding for measures that are designed to reduce future losses to both public and private property.³⁸⁰

Since FEMA is responsible for coordinating the federal government's response efforts that include the authority to direct other federal agencies to provide support,³⁸¹ FEMA is also responsible for coordinating the activation and implementation of the National Response Framework (NRF), which guides how the nation responds to disasters and emergencies.³⁸² The federal response includes conducting joint Preliminary Damage Assessments (PDAs) with state and local governments to identify damages and potential mitigation that can reduce loss of life and property by lessening the impact of the disaster.³⁸³ FEMA states that it utilizes a "bottom-up approach," meaning that it relies on local partnerships to collect the necessary information and pass that information up to regional and national levels. During and immediately following a disaster, the agency is responsible for stabilizing critical services and alleviating immediate threats to human life, safety, and economic security.³⁸⁴ FEMA uses the survivor-centric International Assistance System (IAS) Concept of Operations (CONOPS) during a disaster response to effectively organize regulatory compliance and logistical coordination for acceptance and disbursement of international offers of assistance.³⁸⁵ As a coordinating agency, it is also FEMA's responsibility to properly manage and deploy resources (e.g., commodities, equipment, personnel) into the field to then be distributed by regional offices.³⁸⁶

Following a disaster, FEMA's responsibility shifts to providing recovery assistance to individuals and communities to address their short, intermediate, and long-term needs. These recovery procedures include "the continuation or restoration of services critical to support the physical, emotional, and financial well-being of impacted community members."³⁸⁷ The federal government's support role becomes particularly important post-disaster as many local governments are overwhelmed with trying to respond and address the needs of communities. The duration and extent of FEMA's role following a disaster is largely dependent upon the scale and enduring challenges of a disaster and the local communities' ability to sustain recovery efforts on their own.³⁸⁸

³⁸⁰ FEMA, "A Guide to the Disaster Declaration Process and Federal Disaster Assistance," https://www.fema.gov/pdf/rrr/dec_proc.pdf.

In addition to states, United States territories, the District of Columbia, and Indian Tribal Governments may request the President declare a major disaster or emergency.

³⁸¹ Joint FEMA Statement, at 3.

³⁸² FEMA, *National Response Framework*, Oct. 28, 2019, https://www.fema.gov/sites/default/files/2020-04/NRF_FINALApproved_2011028.pdf.

³⁸³ FEMA, *National Mitigation Framework*, Jun. 2016, p. 1, https://www.fema.gov/sites/default/files/2020-04/National_Mitigation_Framework2nd_june2016.pdf.

³⁸⁴ *Ibid.*, at 38.

³⁸⁵ FEMA, Response to Affected Agency Review, May 16, 2022 [on file].

³⁸⁶ *Ibid.*, at 39.

³⁸⁷ *Ibid.*, at 42.

³⁸⁸ *Ibid.*, at 43.

Resources Provided Before, During, and After a Natural Disaster

Public Assistance

The costs associated with disaster response and recovery are shared among local, state, and the federal governments. The assistance FEMA provides through its Public Assistance (PA) program is subject to a cost share.³⁸⁹ The Federal share is not less than 75 percent of the eligible costs.³⁹⁰ FEMA may recommend an increase up to 90 percent if actual Federal obligations, excluding administrative costs, meet or exceed a qualifying threshold.³⁹¹

FEMA's primary role and responsibilities for the PA program are to determine the amount of funding that is necessary, educate the applicant(s) on procedures, assist the applicant(s) with the development of projects, and finally review the projects for compliance.³⁹² In terms of expenditures, these grants fall under the cost-share agreements between FEMA and the recipient (e.g., state, local, tribal government), of which the federal share of assistance is not less than 75 percent of the eligible cost. The recipient determines how the non-federal share (up to 25 percent) is split among the subrecipients.³⁹³ FEMA is also responsible for determining if the grant request is eligible under the Public Assistance program. Four basic components determine eligibility: applicant, facility, work, and cost.³⁹⁴ An applicant must be a state, territory, tribe, local government, or private nonprofit organization.³⁹⁵ A facility must be a building, public works, system, equipment, or natural feature.³⁹⁶ Work is categorized as "emergency" or "permanent" and must be required as a result of the declared incident.³⁹⁷ Cost is the funding tied directly to the eligible work.³⁹⁸ These four factors make up what FEMA refers to as the "building blocks" of an "eligibility pyramid."³⁹⁹

Many criteria go into determining eligibility. Some of the main reasons for a request to be denied are due to documentation issues or that a request may duplicate benefits already provided by insurance companies.⁴⁰⁰ When an applicant is determined to be ineligible, FEMA provides written notice that includes:

³⁸⁹ FEMA, *Public Assistance Program and Policy Guide*, Jun. 1, 2020, p. 25,

https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf.

³⁹⁰ *Ibid.*

³⁹¹ *Ibid.*

³⁹² FEMA, "Program Overview," Last Updated Nov. 18, 2021, <https://www.fema.gov/assistance/public/program-overview> (accessed Feb. 20, 2022).

³⁹³ A subrecipient is an applicant that receives a subaward from a pass-through entity (e.g., state, local, territorial, tribal government, NGO, etc.) to carry out part of a federal program. See FEMA, "Program Overview."

³⁹⁴ FEMA, *Public Assistance Program and Policy Guide*, Jun. 1, 2020, p. 38,

https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf.

³⁹⁵ *Ibid.*

³⁹⁶ *Ibid.*

³⁹⁷ *Ibid.*

³⁹⁸ *Ibid.*

³⁹⁹ *Ibid.*, at 39.

⁴⁰⁰ *Ibid.*, at 38.

- Explanation of what assistance FEMA denied and, as applicable, the amount of assistance denied for each item;
- The basis for FEMA’s denial, including the provisions of law, regulation, or policy that support the determination;
- A complete list of all documents reviewed (clearly titled for future reference); and
- Information regarding the Applicant’s rights and procedures to appeal.⁴⁰¹

After a disaster occurs, the length of time it takes FEMA to obligate funds to affected communities can greatly impact the ability of those communities to recover.⁴⁰² Several recent U.S. Government Accountability Office (GAO) reports have found that remote areas and territories may face particular challenges in receiving FEMA public assistance grants due to their geographical remoteness; and the GAO explained, that the “speed at which FEMA obligates funding for projects is a priority for advancing recovery process and delivering results to populations affected by a disaster.”⁴⁰³ In 2021, GAO found that it took FEMA, on average, over a year to approve funds for PA projects following the 2018 disasters in the Pacific Islands⁴⁰⁴ and GAO found similar delays in FEMA’s ability to develop PA projects following Hurricane María in Puerto Rico and the U.S. Virgin Islands.⁴⁰⁵ Additionally, according to GAO, FEMA did not meet its national timeliness goals for processing applications for public assistance grants within 45 days and obligating funds within 189 days in fiscal year 2019.⁴⁰⁶ Additional complications and challenges regarding the agency’s response to Hurricanes Harvey and María will be discussed in detail below.

Individual Assistance

In the aftermath of a disaster, individuals and families are significantly impacted physically, financially, and emotionally. While all individuals and families are affected, some are better positioned to mitigate the aftermath of a disaster due to having certain measures in place, such as having insurance for property damage and health care. Conversely, others who do not have insurance or the financial capability to recover from a disaster face significant challenges that may have lingering effects for years following the disaster. As such, FEMA has Individual

⁴⁰¹ Ibid.

⁴⁰² See e.g., Chris Currie, Director, Homeland Security and Justice, U.S. Government Accountability Office, Written Statement to U.S. Commission on Civil Rights, Federal Response to Hurricanes María and Harvey: Civil Rights and Protections Following a Natural Disaster, Jun. 25, 2021 [herein Currie Statement].

⁴⁰³ Currie Statement, at 3.

⁴⁰⁴ GAO, *2018 Pacific Island Disasters: Federal Actions Helped Facilitate the Response, but FEMA Needs to Address Long-Term Recovery Challenges*, Feb. 3, 2021, <https://www.gao.gov/assets/gao-21-91.pdf>.

⁴⁰⁵ GAO, *U.S. Virgin Islands Recovery: Additional Actions Could Strengthen FEMA’s Key Disaster Recovery Efforts*, Nov. 19 2019, <https://www.gao.gov/assets/gao-20-54.pdf>; GAO, *Puerto Rico Disaster Recovery: FEMA Actions Needed to Strengthen Project Cost Estimation and Awareness of Program Guidance*, Feb. 2020, <https://www.gao.gov/assets/gao-20-221.pdf>.

⁴⁰⁶ Currie Statement, at 3.

Assistance (IA) programs to aid all disaster survivors to recover from the event. FEMA offers IA programs that include providing emergency assistance, the Individuals and Household Program (IHP), disaster case management, crisis counseling, disaster legal services, and disaster unemployment assistance to name a few.⁴⁰⁷ Some of these programs are provided by FEMA, while others may be referred to other agencies or organizations such as the Small Business Administration (SBA), the Internal Revenue Service (IRS), the American Red Cross, or the Department of Veteran Affairs (VA).⁴⁰⁸

Individuals and Households Programs

One of FEMA's main IA programs is the Individuals and Households Programs (IHP) which provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs.⁴⁰⁹ IHP assistance comprises two provisions: Housing Assistance and Other Needs Assistance (ONA).⁴¹⁰ Housing Assistance may be provided in the form of financial assistance (funds provided to an applicant) or direct assistance (housing provided to the applicant by FEMA).⁴¹¹ Examples of financial assistance include Lodging Expense Reimbursement, Rental Assistance, Home Repair Assistance, and Home Replacement Assistance. Examples of direct assistance include Multi-Family Lease and Repair, Transportable Temporary Housing Units, such as Recreational Vehicles or Manufactured Housing Units, Direct Lease, and Permanent Housing Construction (PHC).⁴¹²

Some forms of ONA, including personal property and transportation, require the applicant to first apply to the Small Business Administration (SBA) and be denied a loan or provided with a loan insufficient to cover their loss. This criterion is due to FEMA being prohibited from duplicating assistance that is available from other sources or through insurance.⁴¹³

Some types of ONA may only be provided if an applicant does not qualify for a disaster loan from the SBA, which include Personal Property Assistance, Transportation Assistance, and Group Flood Insurance Policy (GFIP). Non-SBA-dependent ONA includes Funeral Assistance, Medical and Dental Assistance, Child Care Assistance, Assistance for Miscellaneous Items, Moving and Storage Assistance, Critical Needs Assistance, and Clean and Removal Assistance.⁴¹⁴ To avoid potential duplication of benefits between FEMA and SBA assistance, FEMA refers an applicant's information to the SBA, and if the applicant indicates a need for

⁴⁰⁷ FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, May 2021, https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid.

⁴¹¹ Ibid.

⁴¹² Ibid.

⁴¹³ 42 U.S.C. 5155.

⁴¹⁴ FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, at 146.

SBA-dependent ONA and their income meets the SBA's minimum requirements to obtain a loan.⁴¹⁵ Applicants who are subsequently denied a loan by the SBA are then referred back to FEMA for consideration for a FEMA SBA-dependent ONA.⁴¹⁶ Other types of assistance under the IHP may also be available; however, these are restricted to individuals who were denied a SBA loan,⁴¹⁷ or if the loan provided was insufficient to cover the loss. These types of expenses can include medical, dental, and funeral expenses, personal property, and transportation expenses.⁴¹⁸ IHP assistance is available to survivors for 18 months following the disaster declaration date, unless extended by the President due to extraordinary circumstances.⁴¹⁹

The amount of financial assistance an individual or household may receive under IHP is limited.⁴²⁰ Financial Housing Assistance and ONA have independent and equal financial maximums. FEMA adjusts these maximum awards each fiscal year based on the Department of Labor Consumer Price Index.⁴²¹ FEMA informs the public of changes to the financial Housing Assistance and ONA maximums each year by publishing a notice in the Federal Register.⁴²² The financial Housing Assistance maximum applies to Home Repair Assistance and Home Replacement Assistance. Temporary Housing Assistance, including Lodging Expense Reimbursement, Rental Assistance, and Continued Temporary Housing Assistance are not counted toward the financial Housing Assistance maximum award.⁴²³ Disaster-caused losses to accessibility-related real and personal property for qualified applicants with a disability or other access and functional need are not subject to a financial assistance maximum.⁴²⁴

To be eligible for IHP assistance, the applicant must be a U.S. citizen, non-citizen national, or a qualified alien, FEMA must be able to verify the applicant's identity, the applicant's insurance or other forms of assistance received cannot meet their disaster-caused needs, and the necessary expenses and serious needs are directly caused by a declared disaster.⁴²⁵ To receive Housing Assistance, applicants must be able to prove they 1) occupied the disaster-damaged property prior to the event and 2) that the damaged property was their primary residence.⁴²⁶ Additionally, an applicant must be able to verify ownership and occupancy of the damaged home. While not seemingly problematic on its face, this criterion has proven to be burdensome for some individuals and households and resulted in large numbers of applicants being denied housing

⁴¹⁵ FEMA, Response to Affected Agency Review, May 16, 2022 [on file].

⁴¹⁶ *Ibid.*

⁴¹⁷ *See, infra* note 479.

⁴¹⁸ FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, at 7.

⁴¹⁹ FEMA, *Individuals and Households Program Unified Guidance (IHPUG)*, Sept. 30, 2016, p. 5, https://www.fema.gov/sites/default/files/2020-05/IHP_Unified_Guidance_FINAL_09272016_0.pdf.

⁴²⁰ FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, at 41.

⁴²¹ *Ibid.*

⁴²² *Ibid.*

⁴²³ *Ibid.*

⁴²⁴ *Ibid.*

⁴²⁵ *Ibid.*, at 46.

⁴²⁶ *Ibid.*, at 51.

assistance. For example, some homeowners do not hold a clear title or deed to their homes since the property was passed down informally through families over generations.⁴²⁷ Without formal deeds, these individuals and households may not receive some federal grants and loans, including FEMA assistance for home repair.⁴²⁸

The eligibility requirements can also be a barrier for renters, some of whom do not have formal rental agreements or were living in homes they did not own when a disaster occurred, which prevents them from receiving federal aid to repair their homes.⁴²⁹ Since IHP is only provided to support the repair or replacement of owner-occupied homes,⁴³⁰ rental owners would not be eligible to directly apply for assistance under the IA program, and those that need assistance to repair damaged rental homes would have to apply to the SBA.⁴³¹

Research has demonstrated that disasters exacerbate any existing rental housing crises for households with the lowest incomes.⁴³² The Commission received testimony regarding rental prices increasing dramatically after a major disaster, with the rise attributed to a combination of the rapid loss in available housing stock due to the disaster, as well as an increase in demand for rental housing for households seeking temporary shelter as their damaged or destroyed homes are replaced.⁴³³ For example, some ZIP codes in the Houston area saw rent increases of 50 percent after Harvey.⁴³⁴ Additionally, data from FEMA's IA program may be used to shape long-term rebuilding efforts. Relying primarily on these data to make recovery decisions overlooks the needs of renters, deemed ineligible for aid by FEMA, but remain in need of recovery funds.⁴³⁵

While many homeowners can get post-disaster aid from personal home insurance policies, for families who have passed down their homes for generations, however, they may no longer carry homeowners' insurance because they do not have mortgages that require it. Further, some

⁴²⁷ Hannah Dreier and Andrew Ba Tran, "'The real damage,' Why FEMA is denying disaster aid to Black families that have lived for generations in the Deep South," *Washington Post*, Jul. 11, 2021, <https://www.washingtonpost.com/nation/2021/07/11/fema-black-owned-property/>.

⁴²⁸ Ibid.; Rebecca Hersher, "Why FEMA Aid Is Unavailable To Many Who Need It The Most," *NPR*, Jun. 29, 2021, <https://www.npr.org/2021/06/29/1004347023/why-fema-aid-is-unavailable-to-many-who-need-it-the-most>.

⁴²⁹ Ibid.

⁴³⁰ FEMA, *Individuals and Households Program Unified Guidance (IHPUG)*, Sept. 30, 2016, p. 6, https://www.fema.gov/sites/default/files/2020-05/IHP_Unified_Guidance_FINAL_09272016_0.pdf.

⁴³¹ Kimberly Blair, "FEMA leaves rental property owners in the dust," *Pensacola News Journal*, May 24, 2014, <https://www.pnj.com/story/news/2014/05/24/fema-didaster-aide/9552621/>.

⁴³² Yentel Statement, at 3.

⁴³³ Ibid, at 18.

FEMA indicated that they often raise the rental assistance rate of the published HUD Fair Market Rental rate for affected areas.

FEMA, Response to Affected Agency Review, May 16, 2022 [on file].

⁴³⁴ Yentel Statement, at 18.

⁴³⁵ Ibid, at 8.

moderate- to low- or fixed-income homeowners cannot afford to pay for homeowners' insurance.⁴³⁶ Additionally, renters are often without adequate insurance coverage.⁴³⁷

Additionally, while many homeowners carry personal home insurance, they may not have additional flood insurance that would offer assistance after some disasters, such as hurricanes. A potential reason for not carrying a flood insurance policy is that it can be cost-prohibitive for many homeowners. According to the Texas Department of Insurance, the average cost of flood insurance in the state is \$700 per year,⁴³⁸ and if one lives in a property that has multiple claims filed, the policy can reach close to \$2,200 annually.⁴³⁹ Therefore, many homeowners and residents rely upon grants from FEMA to repair their homes; and when residents cannot receive the assistance they need, they may be forced to abandon their homes, which has broad effects on communities.⁴⁴⁰ These changes are most often witnessed in less affluent areas and predominately minority neighborhoods. This can further compound the already challenging recovery efforts since it weakens infrastructure and resources that are available to communities.⁴⁴¹

Considerations in Providing FEMA Aid

As discussed above, there are two main programs through which FEMA provides aid to communities and survivors after a disaster: Individual Assistance (IA) and Public Assistance (PA).⁴⁴² For one IA program, the Individuals and Households Program (IHP), FEMA considers several factors when making aid determinations. IHP assistance, which includes Housing Assistance and Other Needs Assistance, provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses or serious needs because of a Presidentially declared disaster. This type of assistance is intended to meet basic needs and supplement disaster recovery efforts.⁴⁴³ The Stafford Act requires FEMA to provide assistance to repair a home to a “safe and sanitary living or functioning condition”⁴⁴⁴

⁴³⁶ Hersher, “Why FEMA Aid Is Unavailable To Many Who Need It The Most.”

⁴³⁷ Brittany Perrigue Gomez, Disaster Benefits Team Manager, Texas RioGrande Legal Aid, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas Briefing before the U.S. Comm’n on Civil Rights, Oct. 21, 2021, at 9 (herein Perrigue Gomez Statement).

⁴³⁸ Texas Department of Insurance, “Flood insurance: Why you need a policy and what it costs,” <https://www.tdi.texas.gov/tips/flood-insurance-cost.html>.

⁴³⁹ Sánchez Statement, at 5.

⁴⁴⁰ Ibid.

⁴⁴¹ FEMA, *National Advisory Council Report to the Administrator*, November 2020, https://www.fema.gov/sites/default/files/documents/fema_nac-report_11-2020.pdf.

⁴⁴² See, *supra* notes **Error! Bookmark not defined.**407-408 (Individual Assistance Program) and 389 (Public Assistance Program).

⁴⁴³ FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, May 2021, p. 6, https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

⁴⁴⁴ 42 U.S.C. § 5174(2)(A)(i)

or put another way, to make a home “habitable.”⁴⁴⁵ Habitable homes meet the following conditions:

- The exterior is structurally sound, including the doors, roof, and windows;
- The electricity, gas, heat, plumbing, and sewer and septic systems function properly;
- The interior’s habitable areas are structurally sound, including ceiling and floors;
- The home is capable of operating for its intended purpose;
- There is safe access to and from the home.⁴⁴⁶

For example, FEMA may provide financial assistance to repair disaster-caused leaks in a roof that damage ceilings and threaten electrical components like overhead lights but would not assist in fixing stains from roof leaks.⁴⁴⁷

Many factors may make an individual or household ineligible for assistance, including if the damages are being covered by insurance, if the home is deemed “safe” to occupy by a FEMA inspector, if occupancy cannot be verified, or if an individual’s identity cannot be verified, among other possible reasons.⁴⁴⁸

FEMA acknowledges that providing relief and recovery efforts to remote and insular locations can pose particular challenges.⁴⁴⁹ In some cases, there is a lack of skilled local labor, lack of building materials, and high transportation costs, among other unique considerations that have to be addressed after a disaster. In these cases, depending on the situation, FEMA may utilize alternative means to identify damaged properties, broaden definitions of eligible property (e.g., personal items necessary for climate-appropriate survival such as detached communal cooking, food caches, smokehouses, steam bathhouses, manually review applicant cases and use alternatives to verify property and ownership (e.g., in cases where properties are handed down generationally and written documentation is sparse), and provide federal funds for increased shipping costs of building materials to insular areas.⁴⁵⁰

⁴⁴⁵ FEMA defines “uninhabitable” as a dwelling that is “not safe, sanitary, or fit to occupy. “Safe” refers to being secure from disaster-caused hazards or threats to occupants and “sanitary” refers to being free of disaster-caused health hazards. FEMA also requires that disaster-damaged components were functional prior to the disaster. “Functional” refers to an item or home capable of being used for its intended purpose. Applicants may provide FEMA with documentation about their disabilities that could potentially impact the habitability determination. See FEMA, *Individual Assistance Program and Policy Guide*, at 78.; see also, FEMA, “Reasons Why You Might Have Been Found Ineligible by FEMA,” Sept. 9, 2020, <https://www.fema.gov/fact-sheet/reasons-why-you-might-have-been-found-ineligible-fema>.

⁴⁴⁶ FEMA, “FEMA Provides for Basic Needs for a Home to be Habitable.” Dec. 7, 2021, <https://www.fema.gov/fact-sheet/fema-provides-basic-needs-home-be-habitable>.

⁴⁴⁷ Ibid.

⁴⁴⁸ FEMA, “Reasons Why You Might Have Been Found Ineligible by FEMA,” Sept. 9, 2020, <https://www.fema.gov/fact-sheet/reasons-why-you-might-have-been-found-ineligible-fema>.

⁴⁴⁹ See e.g., FEMA, *Individual Assistance Program and Policy Guide*, at 76.

⁴⁵⁰ Ibid.

While the IA programs work with individuals and households, the PA program works with State, Local, Territorial, or Tribal (SLTT) governments, and thus take multiple factors into account when making aid determinations.⁴⁵¹ Similar to the IA programs, FEMA can only offer assistance for Presidentially-declared disasters, but governors or Tribal Chief Executives can request a disaster declaration from the President through FEMA.⁴⁵² After the declaration has been announced and the governor or Tribal Chief Executive determines that the damage exceeds their capabilities, FEMA conducts a Preliminary Damage Assessment (PDA) to determine eligibility under the PA program.⁴⁵³ FEMA's evaluation is based on six primary factors: estimated cost of assistance, insurance coverage, other federal agency programs, localized impacts, hazard mitigation, and recent multiple disasters over the last 12 months.⁴⁵⁴ A Tribal government may choose to be a recipient or a subrecipient under a State or Territorial declaration or to request its own declaration as a recipient.⁴⁵⁵ If a Tribal government elects to request its own declaration, different factors are taken into account.⁴⁵⁶

Funding

FEMA funding is generally divided into categories: base funding and major declarations. Base funding is intended to fund ordinary FEMA operations and routine events, whereas major declaration funding is for disaster recovery and relief efforts.⁴⁵⁷ The appropriated amount is typically based on how much money was spent on disaster relief over the past decade. In FY 2017, Congress appropriated \$6.7 billion for major declarations.⁴⁵⁸ However, regular appropriations are rarely sufficient in funding major disaster relief. As mentioned in Chapter 1, 2017 was “a historic year of weather and climate disasters” in the U.S. and the combination of hurricanes and wildfires were among the 57 major disasters declared under the Stafford Act that year.⁴⁵⁹

⁴⁵¹ FEMA, *Public Assistance Program and Policy Guide*, Jun. 1, 2020,

https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf.

⁴⁵² *Ibid.*

⁴⁵³ *Ibid.*

⁴⁵⁴ *Ibid.* (citing 44 C.F.R. § 206.48(a)).

⁴⁵⁵ *Ibid.*

⁴⁵⁶ These factors include: estimated cost of assistance (minimum damage amount \$250,000), insurance coverage, other federal agency programs, hazard mitigation (previous 24 months), types and amount of damage, economic impact of damage, tribal resources available, demographics of impacted community, impact on community infrastructure, unique conditions impacting Tribal governments, and other relevant information.

FEMA, *Public Assistance Program and Policy Guide*, at 23.

⁴⁵⁷ *Ibid.*

⁴⁵⁸ William Painter, “2017 Disaster Supplemental Appropriations: Overview,” Congressional Research Service, Mar. 20, 2018, <https://sgp.fas.org/crs/homesecc/R45084.pdf>.

⁴⁵⁹ *Ibid.*

Apportioning funds during and after disasters is done primarily through the Disaster Relief Fund (DRF).⁴⁶⁰ This resource is an appropriation which FEMA can direct, coordinate, manage, and fund response and recovery efforts that exceed the capabilities of state governments. FEMA can also use this fund to authorize federal disaster support activities and eligible SLTT actions such as providing emergency protection, debris removal, repair of public infrastructure, offer financial assistance, fire management assistance, and hazard mitigation initiatives.⁴⁶¹ The DRF is funded annually and consists of “no year” money which can be carried over to the next fiscal year. When a disaster threatens to deplete the DRF, the President can request supplemental appropriations.⁴⁶² The PA program is FEMA’s largest grant program that is paid out from the DRF.⁴⁶³

When a major catastrophe hits, the DRF is regularly given additional funding by Congress through supplemental appropriations.⁴⁶⁴ For instance, following Hurricane Sandy in 2012, the Obama Administration requested \$60.4 billion in supplemental Congressional appropriations, which included \$11.5 billion for the DRF.⁴⁶⁵ DRF funding for Harvey and María show that allocations⁴⁶⁶ and obligations⁴⁶⁷ for funding can be significantly different than actual expenditures. For instance, by December 31, 2017 (three months post hurricanes), FEMA had obligated \$4.795 billion but spent \$2.966 or \$1.829 billion less (cumulatively). Comparatively, FEMA obligated \$8.822 billion but spent \$3.104 or \$5.718 billion less (cumulatively).⁴⁶⁸ These differences between obligated funds and actual expenditures continued to widen, for example, as of July 31, 2021 (most recent DRF data available), FEMA had obligated \$38.860 billion but spent \$16.893 or \$21.967 billion less (cumulatively).⁴⁶⁹ While actual expenditures to Puerto Rico

⁴⁶⁰ FEMA, “Disaster Relief Fund,” <https://www.fema.gov/about/reports-and-data/disaster-relief-fund-monthly-reports>.

⁴⁶¹ Ibid.

⁴⁶² Dep’t of Homeland Security Office of Inspector General (herein DHS OIG), *FEMA Prematurely Obligated \$478 Million in Public Assistance Funds from FY 2017 through FY 2019*, Feb. 17, 2021, <https://www.oig.dhs.gov/sites/default/files/assets/2021-08/OIG-21-54-Aug21.pdf>.

⁴⁶³ Ibid.

⁴⁶⁴ Painter, “2017 Disaster Supplemental Appropriations: Overview.”

⁴⁶⁵ Ibid.

⁴⁶⁶ Allocations are assignments of appropriated federal funds to specific states, territories, tribes, or local governments. Not all agencies allocate disaster funds in advance of obligations. See FEMA Recovery Glossary, <https://recovery.fema.gov/glossary>.

⁴⁶⁷ Obligations are after funding is awarded; the U.S. government enters a binding agreement called an obligation. The government promises to spend the money, either immediately or in the future. An agency incurs an obligation, for example, when it places an order, signs a contract, awards a grant, purchases a service, or takes other actions that require it to make a payment. See FEMA Recovery Glossary, <https://recovery.fema.gov/glossary>.

⁴⁶⁸ FEMA, “Disaster Relief Fund: Monthly Reports as of Dec. 31, 2017,” Jan. 12, 2018, https://www.fema.gov/sites/default/files/2020-07/disaster-relief-fund-report_1-2018.pdf.

⁴⁶⁹ FEMA, “Disaster Relief Fund: Monthly Reports as of July 31, 2021,” Aug. 10, 2021, https://www.fema.gov/sites/default/files/documents/fema_august-2021-disaster-relief-fund-report.pdf

to aid in the recovery efforts cumulatively equated to more money than Harvey, the length of time for the Island to receive the necessary funds was significantly delayed.⁴⁷⁰

Following the 2017 hurricanes, Congress approved three appropriations bills.⁴⁷¹ The initial bill in September 2017 authorized \$15.25 billion for Hurricanes Harvey and Irma aid, which included \$7.4 billion allocated to the DRF, \$450 million to the SBA's Disaster Loan Program Account, and \$7.4 billion to HUD's Community Development Block Grant (CDBG) program to assist in local aid for Harvey and Irma.⁴⁷²

A month later, Congress passed an additional appropriation bill to cover all three hurricanes: Harvey, Irma, and María.⁴⁷³ This bill provided \$18.67 billion to the DRF, mandated that \$10 million be transferred to the DHS Office of Inspector General (OIG) for audits and investigations related to disasters, and canceled \$16 billion of the National Flood Insurance Program's debt.⁴⁷⁴ The October bill allocated up to \$4.9 billion to Puerto Rico in the form of a Community Disaster Loan, as opposed to the Community Development Block Grant Program (CDBG) awards that were previously allocated to Texas and Florida.⁴⁷⁵ However, in January 2018, FEMA and the Treasury Department denied Puerto Rico the \$4.9 billion loan from the October 2017 bill. In a letter to the Puerto Rican government, the two agencies cited that the local government had too high of a cash balance to receive aid through the Community Disaster Loans Program.⁴⁷⁶ In response, the Puerto Rican government maintained that state and utility operations would expend those funds within a month, especially since almost half of the Island's residents at that time were still without power.⁴⁷⁷ The third bill, which passed in Congress in December 2017 and was

⁴⁷⁰ See e.g., Daniel Farber, "Response and Recovery After María: Lessons for Disaster Law and Policy," *Revista Juridica Upr*. No. 3, Jul. 2018, <http://revistajuridica.uprrp.edu/wp-content/uploads/2018/06/04-Disaster-law-and-policy-1.pdf>; DHS OIG, *FEMA Mismanaged the Commodity Distribution Process in Response to Hurricanes Irma and María*, Sept. 25, 2020, <https://www.oig.dhs.gov/sites/default/files/assets/2020-09/OIG-20-76-Sep20.pdf>; see also, Nicole Roy, Project Coordinator, Salvation Army, testimony, *DC Briefing*, pp. 94-95; Charley E. Willison, Phillip M. Singer, Melissa S. Creary, and Scott L. Greer, "Quantifying inequities in US federal response to hurricane disaster in Texas and Florida compared with Puerto Rico," *BMJ Global Health*, 4(1): 2019, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6350743/>.

⁴⁷¹ DHS OIG, *FEMA Prematurely Obligated \$478 Million in Public Assistance Funds from FY 2017 through FY 2019*.

⁴⁷² Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017, 115th Congress (2017-2018), <https://www.congress.gov/bill/115th-congress/house-bill/601>.

⁴⁷³ Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2017, Pub. L. No. 115-72, 131 Stat. 1224 (Oct. 26, 2017). <https://www.congress.gov/bill/115th-congress/house-bill/2266/text>.

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.*; see also, David Dayen, "Puerto Rico Relief Bill Cancels \$16 Billion in Debt – But Not for Puerto Rico," *The Intercept*, Oct. 11, 2017, <https://theintercept.com/2017/10/11/puerto-rico-relief-bill-cancels-16-billion-in-debt-but-not-for-puerto-rico/>.

⁴⁷⁶ Dayen, "Puerto Rico Relief Bill Cancels \$16 Billion in Debt – But Not for Puerto Rico."

⁴⁷⁷ *Ibid.*

signed in February 2018, provided \$84 billion in disaster aid for hurricane relief in Florida, Texas, Puerto Rico, the U.S. Virgin Islands, and wildfire relief for California.⁴⁷⁸

Additional Federal Assistance

While FEMA plays an integral role in coordinating aid after a disaster, other organizations and agencies are also a critical component in offering assistance to survivors. For instance, the Small Business Administration (SBA) plays a major role in providing loans to homeowners, renters, businesses, and nonprofit organizations for rebuilding.⁴⁷⁹ SBA home loans are capped at \$200,000 to repair or replace a home and \$40,000 to repair or replace personal property. Loans for business owners have larger limits of up to \$1,500,000 for real estate, machinery and equipment, inventory, and other physical losses. Under the SBA's Economic Injury Disaster Loan amounts are capped for business owners at \$1,500,000, and this applies to the combination of physical and economic injury. However, if a business is the major source of employment, the SBA retains the authority to waive the limit.⁴⁸⁰ The Commission received testimony at the Texas briefing indicating that SBA staff are often "proactive, knowledgeable, and among the most willing to collaborate," and that SBA Disaster Loans to Harris County amounted to \$150 million – approximately 15 percent of total losses.⁴⁸¹ Panelists mentioned that SBA low-interest loans could also be an option for renters.⁴⁸² Unfortunately, SBA Disaster Loans are one of the lesser known programs.⁴⁸³

Unlike grants provided by FEMA, SBA disaster assistance loans are repaid to the U.S. Treasury.⁴⁸⁴ SBA loans fall into two main categories: physical disaster loans and economic injury disaster loans. Physical loans are intended to fund permanent rebuilding and replacement of uninsured disaster damages to privately-owned real and/or personal property. Alternatively, economic disaster loans are provided to small businesses only to aid in providing enough working capital until normal operations can resume after a physical disaster.⁴⁸⁵ Since these loans must be repaid, the agency stated that the SBA "can only approve loans to applicants with a reasonable ability to repay the loan and other obligations from earnings.... Generally, over 90 percent of SBA's disaster loans are to borrowers without credit available elsewhere and have an

⁴⁷⁸ Making further supplemental appropriations for the fiscal year ending September 30, 2018, for disaster assistance for Hurricanes Harvey, Irma, and María, and calendar year 2017 wildfires, and for other purposes," H.R. 4667, 115th Cong. (2017-2018), <https://www.congress.gov/bill/115th-congress/house-bill/4667>, ; Bipartisan Budget Act of 2018," Pub. L. No. 115-123, 132 Stat. 64 (Feb. 9, 2018), <https://www.congress.gov/bill/115th-congress/house-bill/1892>.

⁴⁷⁹ U.S. Small Business Administration (herein SBA), "Disaster Assistance," <https://www.sba.gov/funding-programs/disaster-assistance>.

⁴⁸⁰ FEMA, "State Disaster Management," Jan. 2003, Unit 7.34 <https://www.hsdl.org/?abstract&did=485267>.

⁴⁸¹ Sánchez Statement, at 5.

⁴⁸² Sánchez Testimony, p. 73

⁴⁸³ Sánchez Statement, at 5.

⁴⁸⁴ FEMA, "State Disaster Management," Jan. 2003, Unit 7.34, <https://www.hsdl.org/?abstract&did=485267>.

⁴⁸⁵ Ibid.

interest rate of around 4 percent.”⁴⁸⁶ However, due to the eligibility requirements, in practice, this equates to lower-income survivors being less likely to qualify for SBA loans than survivors with more resources to repay these loans.⁴⁸⁷

In addition to SBA, disaster grants are also available from the U.S. Department of Housing and Urban Development (HUD) in the form of Community Development Block Grant Disaster Recovery funding (CDBG-DR) as well as Community Development Block Grant Mitigation (CDBG-MIT). Unlike other recovery assistance programs administered by FEMA and SBA, CDBG-DR assistance is not permanently authorized. After Congress appropriates funding for the CDBG-DR program, HUD formally announces the CDBG-DR awards and publishes rules for the awards in a Federal Register notice.⁴⁸⁸ Once funds are awarded, state and local governments either administer the grant program directly or distribute funds to subrecipients or subgrantees.⁴⁸⁹

The CDBG program requirements contained in the Code of Federal Regulations (CFR) outline the framework for providing HUD funds. In a 2021 HUD OIG report, HUD explained that several actions must occur before grant funds are disbursed to support recovery or mitigation activities.⁴⁹⁰ Before grantees can officially formulate relief plans, HUD must issue Federal Register notices for each supplemental appropriation, which sets requirements for the grantee designated to receive the funds, and any delay in submitting a notice can delay the distribution of funds.⁴⁹¹ With each newly issued Federal Register notice, recipients must develop a program outlined by an action plan to address the unmet recovery or mitigation needs of their communities. Disaster victims, however, are oftentimes in a desperate predicament and lengthy delays in receiving aid exacerbate these conditions.⁴⁹² The OIG report raised the concern that each of these steps are expected to be completed during a time of great uncertainty; and given that personnel and infrastructure may have been impacted after a disaster, this can create significant delays in distributing aid funds up to 9 to 12 months.⁴⁹³

⁴⁸⁶ By law, SBA loans are held at interest rates around 4 percent, available for terms of up to 30 years, and in some cases, borrowers can refinance prior debts. The agency states that the interest rate for each loan is based upon SBA’s determination of whether an applicant does or does not have credit available elsewhere (i.e., the ability to borrow or use their own resources to overcome the disaster), *see* FEMA, “State Disaster Management,” Jan. 2003, Unit 7.32, <https://www.hsdl.org/?abstract&did=485267>; *see also*, 13 CFR § 120.214.

⁴⁸⁷ Stephen B. Billings, Emily Gallagher, and Lowell Ricketts, “Let the Rich Be Flooded: The Distribution of Financial Aid and Distress after Hurricane Harvey,” *SSRN*, May 30, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3396611.

⁴⁸⁸ U.S. Dep’t of Housing and Urban Development (herein HUD), “CDBG-DR Overview,” <https://www.hudexchange.info/programs/cdbg-dr/overview/>.

⁴⁸⁹ *Ibid.*

⁴⁹⁰ Stephen Begg, Deputy Inspector General, HUD Office of Inspector General, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights and Protections Following a Natural Disaster Briefing before the U.S. Comm’n on Civil Rights, Jun. 25, 2021, at 3 (herein Begg Statement).

⁴⁹¹ *Ibid.*, at 2.

⁴⁹² *Ibid.*

⁴⁹³ *Ibid.*

Francisco Sánchez, Jr., President of the Emergency Management Association of Texas explained to the Commission that the appropriation statute of the Bipartisan Budget Act of 2018⁴⁹⁴ “unequivocally” required that of the CDBG funds, \$28 billion must remain available for “activities related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the most impacted and distressed areas.”⁴⁹⁵ As of October 2021, however, “\$0 of CDBG-MIT funds from the Hurricane Harvey State Mitigation Competition program have been awarded to some of the most impacted communities.”⁴⁹⁶

States operate their non-disaster CDBG programs as a “pass-through” program, and HUD has historically granted maximum feasible deference to a state’s interpretation of the statutory and programmatic requirements as long as the state’s interpretations are not plainly inconsistent with the Housing and Community Development Act of 1974, as amended.⁴⁹⁷ Additionally, HUD requires that a state’s definitions of requirements be explicit and reasonable. Notably, the term maximum feasible deference is not in the Housing and Community Development Act of 1974.⁴⁹⁸ Instead, HUD’s Office of Community Planning and Development (CPD) stated in its public guidance regarding State CDBG programs that the term was created by HUD’s Office of General Counsel. The guidance states that HUD created the theory of maximum feasible deference to (1) provide for minimal regulation beyond the statute and (2) allow states to adopt more restrictive requirements as long as they do not contradict or are not inconsistent with the 1974 Act.⁴⁹⁹ In practice, however, states have used this concept, with the implicit support of HUD, to adopt less restrictive requirements, which are generally not treated like pass-through funds. As a result, this has made it more difficult for HUD to ensure consistent implementation of federal standards, such as procurement standards, and to address identified weaknesses. It also complicates HUD’s oversight, monitoring, and tracking efforts, as program staff must learn and account for unique state procurement standards to oversee the funds.⁵⁰⁰

Francisco Sánchez, Jr., President of the Emergency Management Association of Texas, also told the Commission that the funding schemas by which CDBG funds are allocated can allow states to

use their power as an intermediary to deprive impacted areas of needed funding for mitigation and other efforts. The State of Texas reallocated more than \$1 billion in federal CDBG-R funds from Harris County following Harvey. This has significantly

⁴⁹⁴ Bipartisan Budget Act of 2018, Pub. L. No. 115-123, 132 Stat. 64 (Feb. 9, 2018), <https://www.congress.gov/bill/115th-congress/house-bill/1892>.

⁴⁹⁵ Sánchez Statement, at 4.

⁴⁹⁶ Ibid.

⁴⁹⁷ Begg Statement, at 3.

⁴⁹⁸ Ibid.

⁴⁹⁹ Ibid.

⁵⁰⁰ Ibid.

impacted mitigation and housing projects that could have provided additional security for Harris County residents.⁵⁰¹

HUD OIG investigators and other federal agencies during previous disasters have identified that grantee fraud or corruption in administering funds, procurement fraud, or embezzlement are common issues.⁵⁰² Other types of fraud can include contractor-subgrantee partnerships which involves contractors not completing work after being paid, thus leaving disaster survivors with incomplete repairs.⁵⁰³ Conversely, other types of fraud may be promulgated by the homeowner. For example, homeowners may falsely identify a second home or an investment property as their primary residence, falsely report damage to properties not sustained during the disaster, disregard program requirements, or sell a rental property before receiving a homeowner rental assistance grant.⁵⁰⁴ HUD's OIG also found instances of individuals committing identity theft by using documents or materials left in evacuated areas or by individuals posing as government officials or contractors.⁵⁰⁵ Each of these types of fraud can impact disaster survivors' ability to recover in a timely and equitable manner.

According to a 2021 GAO report, approximately \$39.5 billion in CDBG-DR funds appropriated from 2017-2019 by Congress may have been at risk of fraud from contractors, disaster recovery applicants, and grantees.⁵⁰⁶ GAO found that HUD has taken some steps to evaluate fraud risks agency-wide. For example, HUD conducts an agency-wide assessment of risks through a Front-End Risk Assessment, which also considers fraud risks. In 2020, HUD redesigned its-agency-level approach to assess fraud risks through its Fraud Risk Management Maturity Model.⁵⁰⁷ While HUD has taken some steps to measure fraud risks agency-wide, GAO found that HUD has not conducted the comprehensive fraud risk assessment of CDBG-DR that was called for in GAO's Fraud Risk Framework.⁵⁰⁸ The report found that "CDBG-DR operates in a decentralized risk environment that...makes it vulnerable to fraud," since "CDBG-DR funds can flow through a number of entities before reaching their intended beneficiaries."⁵⁰⁹ Furthermore, HUD's current fraud risk approach does not include relevant stakeholders such as grantees.⁵¹⁰ Many at-risk residents in both Texas and Puerto Rico voiced strong concerns about fraud when it came to CDBG fund allocations and appropriations for projects within their communities.⁵¹¹

⁵⁰¹ Sánchez Statement, at 4.

⁵⁰² Begg Statement, at 5.

⁵⁰³ Ibid,

⁵⁰⁴ Ibid.

⁵⁰⁵ Ibid.

⁵⁰⁶ GAO, *Disaster Recovery - HUD Should Take Additional Action to Assess Community Development Block Grant Fraud Risks*, May 5, 2021, p. 38, <https://www.gao.gov/assets/gao-21-177.pdf>.

⁵⁰⁷ Ibid, at 33.

⁵⁰⁸ Ibid, at 21.

⁵⁰⁹ Ibid, at 36.

⁵¹⁰ Ibid.

⁵¹¹ See Martinez-Romain Statement; Navarro Statement; Aubert Statement; Begg Statement.

FEMA's Coordinating Role in Disaster Response

As discussed in Chapter 1: Introduction, the Stafford Act defines what federal response and recovery is available after disasters and sets the conditions for obtaining that assistance.⁵¹² Under the Act, FEMA also has the authority to issue Mission Assignments (MAs) to other federal agencies (e.g., HUD, Health and Human Services [HHS]) as part of the response and recovery coordination efforts. For agencies such as HUD, MAs are issued under the National Response Framework (NRF)⁵¹³ to staff FEMA Joint Field Offices (JFOs) and Disaster Recovery Centers (DRC), and under the National Disaster Recovery Framework (NDRF)⁵¹⁴ to coordinate the Housing Recovery Support Function (RSF) on-site at FEMA JFOs and from HUD authorities as well as a Mas from FEMA.⁵¹⁵ Coordination between FEMA and other federal agencies typically occurs at the headquarters and the field level after a disaster occurs. Between FEMA and HUD, for example, these efforts can involve sharing information regarding damaged HUD assisted properties and vacancies due to displacement, availability of housing for disaster survivors, HUD resource needs (e.g., generators, temporary rentals), funds available for recovery, and MAs issued by FEMA.⁵¹⁶ If FEMA issues an MA to HUD, several offices within both agencies collaborate and negotiate the scope of work and budget with FEMA.⁵¹⁷ See Figure 33 below displaying the agency's time frames and coordination role in disaster response and recovery.

⁵¹² Robert T. Stafford Disaster Relief and Emergency Assistance (Stafford) Act, 42 U.S.C. §§ 5121-5206.

⁵¹³ The National Response Framework (NRF) “defines the roles, responsibilities, and coordination across Federal, state, and local partners on response activities immediately after a disaster through 15 Emergency Support Functions. [FEMA] coordinates all federal efforts under the NRF.” See HUD Disaster Operations: Frequently Asked Questions, <https://www.hud.gov/sites/documents/huddisasteropsfaqs.pdf>.

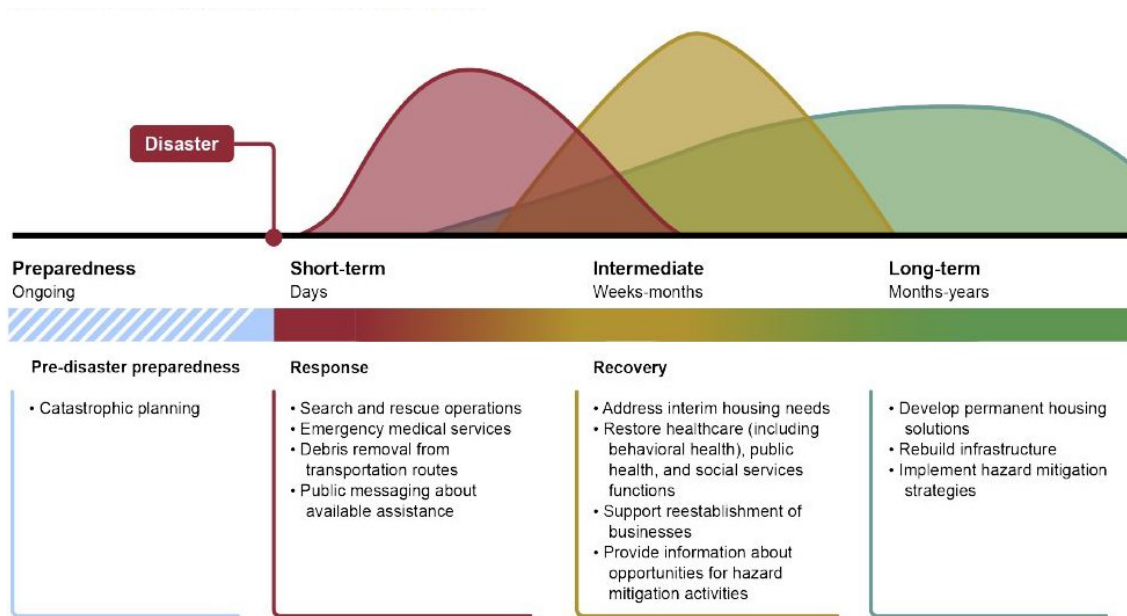
⁵¹⁴ “The National Disaster Recovery Framework (NDRF) defines how Federal agencies will more effectively organize and operate to utilize existing resources to promote effective recovery and support States, Tribes and other jurisdictions affected by a disaster. The following Recovery Support Functions (RSFs) comprise the NDRF's coordinating structure for key functional areas of assistance: Community Planning and Capacity Building (led by FEMA), Economic (led by DOC), Health and Social Services (led by HHS), Housing (led by HUD), Infrastructure (led by USACE), and Natural and Cultural Resources (led by DOI). The purpose of the RSFs is to support local governments by facilitating problem solving, improving access to resources and by fostering coordination among State and Federal agencies, nongovernmental partners and stakeholders.” See HUD Disaster Operations: Frequently Asked Questions, <https://www.hud.gov/sites/documents/huddisasteropsfaqs.pdf>.

⁵¹⁵ See HUD Disaster Operations: Frequently Asked Questions, <https://www.hud.gov/sites/documents/huddisasteropsfaqs.pdf>.

⁵¹⁶ Ibid.

⁵¹⁷ Ibid.

Figure 3 Time Frames and Activities for FEMA's Coordination Role in Disaster Response and Recovery



Source: GAO analysis of Department of Homeland Security policy. | GAO-21-91

Note: The recovery process is a sequence of interdependent and often concurrent activities, such as the selected examples in this figure

Source: Currie Statement, at 7

In 2017, there was an unprecedented demand for federal assistance in terms of funding and personnel due to four sequential disasters – Hurricanes Harvey, Irma, María, and the California wildfires.⁵¹⁸ Table 1 below shows FEMA's PA funding allocations across the natural disaster 2017 season.

Table 1 Public Assistance Funding (CY 2017)

Event	Number of Applicants	Number of Project Worksheets (PWs) Obligated	Federal Share Obligated
Harvey	1,398	6,562	\$2,506,341,969.53
Irma	2,376	10,457	\$2,605,726,212.52
María	1,162	8,929	\$27,571,380,708.69

⁵¹⁸ See e.g., NOAA, "Extremely active 2017 Atlantic hurricane season finally ends," Nov. 30, 2017, <https://www.noaa.gov/media-release/extremely-active-2017-atlantic-hurricane-season-finally-ends>.

Other Events	4,275	10,005	\$2,398,132,345.85
Total CY 2017 Declarations	9,211	35,953	\$35,081,581,236.59

Source: Joint FEMA Statement at 3; table recreated by Commission staff.

FEMA provided more than \$4.1 billion dollars in IA funding across many 2017 disasters.⁵¹⁹ The response to Harvey in Texas and María in Puerto Rico saw the most IA funding, receiving \$1.6 billion and \$1.3 billion in funding, respectively.⁵²⁰

In addition to the severe funding demands, FEMA reported an unprecedented request for support staff during the 2017 disaster season. These included hiring additional local staff and contractors, expanding mission assignments, the National Processing Service Center (NPSC) call staff, as well as the activation of the DHS Surge Capacity Force (SCF).⁵²¹

In a joint written statement to the Commission, FEMA wrote that it is working with Community Planning and Capacity Building Recovery Support Function (CPCB RSF) to offer technical assistance to support the development of recovery plans and building of capability in communities with low capacity but high impact, but only if the state government requests and supports the assistance.⁵²² At the state level, there can be challenges in states' ability and/or willingness to accept this support, which can limit assistance options for communities that have low capacities or are underserved. FEMA wrote that it does not offer this assistance directly to localities.⁵²³

Regarding the coordination and response to Harvey, FEMA greatly increased the number of incident management staff in the field within 60 days following Harvey's landfall from 2,800 to 10,400 staff.⁵²⁴ To supplement staff, FEMA requested the activation of DHS' SCF that provided an additional 3,000 staff into the field. FEMA also coordinated with stakeholders and other agencies, such as the Urban Search and Rescue to aid in delivering food and checking hospital capacities and the Department of Defense (DoD) and DHS to assist in air-dropping food and water in otherwise inaccessible areas.⁵²⁵ In Texas, the Community Planning and Capacity Building Recovery Support Function (CPCB RSF) recommended technical assistance for

⁵¹⁹ Joint FEMA Statement, at 3.

⁵²⁰ DR 3221 Texas Hurricane Harvey received \$1,656,898,380.50 in IA funding; DR4339 Puerto Rico Hurricane Maria received \$1,336,691,744.06 in IA funding.

Joint FEMA Statement, at 2-3.

⁵²¹ Joint FEMA Statement, at 6.

⁵²² Joint FEMA Statement, at 11.

⁵²³ Ibid.

⁵²⁴ Ibid.

⁵²⁵ Ibid.

multiple local localities, but due to challenges at the state level (to be discussed below), limited capacity support was offered in coordination with the Texas Division of Emergency Management (TDEM).⁵²⁶

Coordination in Puerto Rico was particularly complicated due to its location and its infrastructure.⁵²⁷ After María made landfall, every airport and port was closed, and only 5 percent of the population had cell phone access. Because the main Island was without power, 3.7 million residents were without electricity. María also disrupted critical supply routes from Puerto Rico to the U.S. Virgin Islands, which resulted in the longest sustained air mission to deliver resources in FEMA's history.⁵²⁸ FEMA stated to the Commission that while FEMA maintains a stockpile of commodities on the Island, the agency distributed 800,000 total units from Puerto Rico, which was more than 80 percent of its inventory for these commodities.⁵²⁹ Due to damage and temporary inoperability of the airports and ports, FEMA coordinated alternatives with other federal partners on the Island and partnered with DoD to airdrop commodities (e.g., food and water) to isolated communities starting three days after María. In FEMA's statement to the Commission, it wrote that FEMA delivered 63.6 million meals and 74.1 million liters of water to the local government from September 2017 through April 2018.⁵³⁰

In response to María, FEMA coordinated aid through the Homeland Security Operations Analysis Center/RAND to assist Puerto Rico to help develop its Transformation and Innovation in the Wake of Devastation: an Economic and Disaster Recovery Plan.⁵³¹ As a part of this coordination, Governor Ricardo Rosselló Nevares established the Central Office of Recovery, Reconstruction, and Resiliency (COR3) to work with multiple federal agencies including DHS, FEMA, as well as municipalities, the private sector, the nonprofit sector, and others to develop and operationalize Puerto Rico's rebuilding efforts.⁵³²

Civil Rights Concerns

Racial Disparities

⁵²⁶ Ibid, at 12.

⁵²⁷ Ibid.

⁵²⁸ Ibid, at 7.

⁵²⁹ Ibid.

⁵³⁰ Ibid, at 7-8.

⁵³¹ Ibid, at 12.

⁵³² Central Office for Recovery, Reconstruction, and Resiliency, *Transformation and Innovation in the Wake of Devastation*, Jan. 2019, <https://prsciencetrust.org/wp-content/uploads/2019/01/pr-transformation-innovation-plan.pdf>.

Stough et al. (2016) found that marginalized individuals and disadvantaged communities may be especially vulnerable in navigating the recovery process.⁵³³ There are social factors that predate a disaster, and these issues do not disappear when a disaster occurs.

FEMA's Acting Associate Administrator for FEMA's Office of Response and Recovery, David Bibo, testified to the Commission that FEMA recognizes these social and structural factors, explaining that:

The challenges that a community faces in advance of a disaster, before a disaster, whether it's poverty, housing constraints, fragility of infrastructure are unfortunately all exacerbated by disasters and that makes the response effort and recovery effort all the more challenging.⁵³⁴

Similarly, in testimony to the Texas State Advisory Committee (SAC), Chriselle Palay, Director for the H.O.M.E. Coalition, explained that when natural disasters occur, too often they are understood as affecting all communities equally; and thus, the aid that follows is applied similarly.⁵³⁵ Research by the American Sociological Association has shown, however, that this has not been the case and that

disasters, and the federal aid that follows, leaves affluent white communities better off, while their poor neighbors of color tend to slip deeper into poverty... Those with greater wealth and property are more likely to get a greater amount of FEMA aid than those with little wealth and little to no property.⁵³⁶

For instance, disaster researchers Junia Howell and James Elliott conducted a longitudinal study tracking the correlation between natural disasters and the racial wealth gap from 1999 to 2013, finding that natural disasters and the recoveries that follow tend to lead to an increase in the racial wealth gap.⁵³⁷ The paper shows that White residents who lived in counties with only \$100,000 in damage during this time period gained an average of about \$26,000 in wealth. Conversely, White residents who lived in counties with at least \$10 billion in damage over the same period gained almost \$126,000, which means that White residents in counties with considerable natural disaster damage accumulate more wealth than their counterparts living in

⁵³³ Laura Stough, Amy Sharp, J. Aaron Resch, Curt Decker, and Nachama Wilker, "Barriers to the long-term recovery of individuals with disabilities following a disaster," *Disasters*, vol. 40, no. 3, Jul. 2016, <https://redd.tamu.edu/wp-content/uploads/sites/39/2020/01/Barriers-to-the-long-term-recovery-2015.pdf>.

⁵³⁴ Bibo Testimony, *DC Briefing*, p. 15.

⁵³⁵ Chriselle Palay, Director, H.O.M.E. Coalition, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Aug. 20, 2020, at 13 [on file].

⁵³⁶ *Ibid.*

⁵³⁷ Junia Howell and James Elliott, "Damages Done: The Longitudinal Impacts of Natural Hazards on Wealth Inequality in the United States," *Social Problems*, vol. 66, no. 3, Aug. 2019, <https://academic.oup.com/socpro/article/66/3/448/5074453?login=true>.

counties without major disaster damage.⁵³⁸ This correlation was found to be inverted when it came to communities of color. The study showed that for Black residents who lived in counties with \$100,000 in damage, on average gained an estimated \$19,000 in wealth, while those living in counties with \$10 billion in damage, lost an estimated \$27,000 in wealth. Latinx residents gained on average an estimated \$72,000 and lost an estimated \$29,000, respectively; and Asian residents gained on average \$21,000 and lost \$10,000, respectively. Taken together, the study suggests that after disasters, White residents accumulate more wealth, whereas residents of color accumulate less which leads to an increase in the racial wealth gap (i.e., wealth inequality) in counties that are hit more by natural disasters.⁵³⁹ Put another way, their findings indicate “that the more wealth one has, the more one benefits from living in a county that receives more FEMA aid, all else being equal, including local damages incurred.”⁵⁴⁰

It is apparent that all communities in a disaster area suffer negative effects after a disaster, however, some communities experience these effects in more pronounced ways.⁵⁴¹ Disasters can highlight existing inequities and exacerbate issues that underserved and historically marginalized communities already experience.⁵⁴² Kathleen Tierney, Professor Emerita at the University of Colorado, Boulder, asserts:

Disasters are often depicted as great levelers, victimizing rich and poor alike. The effects of disasters on populations are anything but random... The disaster vulnerability of individuals and groups is associated with a number of socioeconomic factors that include income, poverty, and social class; race, ethnicity, and culture; physical ability and disability; language competency; social networks and social capital; gender; household composition; homeownership; and age... The same factors that disadvantage members of society on a daily basis also play out during disasters.⁵⁴³

Professor of Sociology and disaster relief expert Elaine Enarson also explains that “the everyday living conditions of the nation’s poorest, sickest, most dependent, and most isolated residents directly and indirectly increase the exposure of these residents to physical hazards and to the social, economic, political, and psychological impacts of disaster events.”⁵⁴⁴

Tricia Wachtendorf, Director of the Disaster Research Center at the University of Delaware, testified to the Commission as to what is known about inequities and vulnerabilities during disasters.⁵⁴⁵ She indicated that without addressing routine vulnerabilities, inequities in response

⁵³⁸ Ibid.

⁵³⁹ Ibid.

⁵⁴⁰ Ibid, at 448–467.

⁵⁴¹ See e.g., FEMA, *National Advisory Council Report to the Administrator*.

⁵⁴² Ibid.

⁵⁴³ Ibid, at 12 (internal citations omitted).

⁵⁴⁴ Ibid.

⁵⁴⁵ Wachtendorf Testimony, *Texas Briefing*, pp. 21–27.

efforts are inevitable.⁵⁴⁶ For example, stormwater systems are meant to mitigate the impact of flooding, yet the condition and capacity of those systems are insufficient in less advantaged areas, and racial neighborhood composition is a strong predictor of the stormwater infrastructure available.⁵⁴⁷ Research shows that homes of similar quality in neighborhoods with similar amenities are worth 23 percent less in majority Black neighborhoods, compared to those with very few or no Black residents, and that across majority Black neighborhoods, owner-occupied homes are undervalued by \$48,000 per home on average.⁵⁴⁸ Chauncia Willis, former emergency manager for Tampa, Florida, and co-founder of the Institute for Diversity and Inclusion in Emergency Management, a nonprofit organization that advocates for equity in disaster response provided testimony regarding residential patterns in Texas. She stated that nearly 90 percent of Houston's open ditch draining systems are in low-income communities, and that Black and Latinx residents were more commonly associated with lower-income communities.⁵⁴⁹ Among Texas Gulf Coast residents affected by Harvey, Black residents were less likely to indicate that they were getting the help they needed to recover. Overall, 45 percent of affected residents said they were "not getting the help" they needed to recover from Harvey which rose to 64 percent among Black residents.⁵⁵⁰

The Commission received testimony from residents in Texas reporting that their entire neighborhood was rejected because inspectors had a poor impression of the families living there, or would indicate that they were "rejected before the inspector came through the door" and that deferred maintenance rejections are more likely in communities that are perceived as non-white.⁵⁵¹ The Commission also heard that it was not uncommon for a survivor to complain that occasionally an inspector conducted a drive-by inspection by taking a photo of the exterior of the property, not stepping out of their vehicle.⁵⁵² Stakeholders explained that many inspectors were afraid to go into poverty-ridden communities or "dangerous" seeming neighborhoods, or that they were intimidated to expose that their Spanish skills were not sufficient.⁵⁵³ Julia Orduña, Southeast Regional Director of Texas Housers, testified that they have found racial inequities in FEMA's Verified Loss determinations, a property value-based assessment, which reduced a

⁵⁴⁶ Ibid, at 21-22.

⁵⁴⁷ Ibid, at 22-23.

⁵⁴⁸ See e.g., Andre Perry, Jonathan Rothwell, and David Harshbarger, "The devaluation of assets in Black neighborhoods," *Brookings Institute*, Nov. 27, 2018, <https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/>.

⁵⁴⁹ Chauncia Willis, Chief Executive Officer, Institute for Diversity and Inclusion in Emergency Management, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas Briefing before the U.S. Comm'n on Civil Rights, Oct. 21, 2021, at 2 (herein Willis Statement).

⁵⁵⁰ Ibid, at 2; Hamel et al., at 10.

⁵⁵¹ Hirsch Statement, at 2.

⁵⁵² Perrigue Gomez Statement, at 7.

⁵⁵³ Adi Martínez-Román, Director, UPR Resiliency Law Center of the University of Puerto Rico Law School, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm'n on Civil Rights, Dec. 10, 2021, at 4 (herein Martínez-Román Statement).

survivor’s ability to obtain adequate compensation to rebuild their homes, and FEMA programs do not provide financial support to relocate to safer areas which further widens the gap in the ability to recover for people of color.”⁵⁵⁴

Ethan Raker, a sociologist at the University of British Columbia, used a public record request to analyze 5.4 million FEMA applications from homeowners affected by hurricanes between 2005 and 2016, and found racial disparities at “every stage of the process.”⁵⁵⁵ Specifically, Raker found that the higher the percentage of Black residents living in a specific zip code, the less likely applicants were to get an inspection – a requirement before FEMA releases funds. Moreover, even when survivors in majority Black neighborhoods were able to get a damage inspection, 11 percent had their requests denied and were not given a reason. Comparatively, 4 percent in majority White neighborhoods were denied with no reason given.⁵⁵⁶ Lastly, when Black homeowners were able to get their applications approved, FEMA awarded them between 5 and 10 percent less money on average than applicants in predominantly White areas.⁵⁵⁷

Similarly, another study by Domingue and Emrich analyzed FEMA grants to 1,621 counties from 2012 to 2015, and found a correlation between homeowners who lived on blocks with more nonwhite residents, as well as lower incomes and credit scores, had a lower chance of getting approved for FEMA recovery funds.⁵⁵⁸ These correlations were also evident when it comes to funding for counties and municipalities for rebuilding roads, bridges, hospitals, and other facilities after a disaster. The study found that counties with a significant share of Black, Latinx, or Native American residents often received less money from FEMA than predominantly White counties, even after controlling for amount of damage.⁵⁵⁹

When a disaster occurs, there are more benefits available to more traditional homeowners overall as compared to other types of living arrangements, which may also contribute to racial disparities in disaster relief. For example, in some minority communities, it is common for families to co-own homes, rather than having a single name on the deed. Therefore, if FEMA requires that disaster survivors prove that they personally own their home to receive funds to repair it, then that may disqualify individuals from obtaining the funds they need.⁵⁶⁰ Willis explains that a

⁵⁵⁴ Orduña Statement, at 2.

⁵⁵⁵ Christopher Flavelle, “Why Does Disaster Aid Often Favor White People?” *New York Times*, Aug. 5, 2021, <https://www.nytimes.com/2021/06/07/climate/FEMA-race-climate.html>.

⁵⁵⁶ *Ibid.*

⁵⁵⁷ *Ibid.* These findings are likely due to the fact that homeowners in whiter zip codes have higher property value and therefore “more” assessed damage.

Ethan Raker, “Stratifying Disaster: State Aid, Institutional Processes, and Inequality in American Communities,” *American Sociological Review R&R*, 2020, <https://appam.confex.com/appam/2020/meetingapp.cgi/Paper/37750>.

⁵⁵⁸ Simone Domingue and Christopher Emrich, “Social Vulnerability and Procedural Equity: Exploring the Distribution of Disaster Aid Across Counties in the United States,” *The American Review of Public Administration*, vol. 49, no. 8, 2019, <https://journals.sagepub.com/doi/abs/10.1177/0275074019856122?journalCode=arpb>.

⁵⁵⁹ *Ibid.*

⁵⁶⁰ Hersher, “Why FEMA Aid Is Unavailable To Many Who Need It The Most.”

more diversified staff “would be more likely to understand that the policy could lead to lopsided outcomes.”⁵⁶¹

FEMA's National Advisory Council also stresses the need for additional cultural awareness for FEMA employees and management.⁵⁶² In its 2020 report to the FEMA Administrator, the Council states that the agency's leadership should implement trainings and programs that focus on increasing cultural competence, racial diversity, equity, and inclusion.⁵⁶³ Additionally, the report stated that FEMA should work to create a workforce that reflects the communities it serves, which means “being explicitly intentional about recruiting an inclusive workforce and providing fair and equitable opportunities for professional development that lead to a diverse leadership and workforce throughout the organization.”⁵⁶⁴ In July 2021, FEMA announced two initiatives to advance equity across the agency: the formation of an Equity Enterprise Steering Group and the establishment of a stakeholder engagement process to develop the agency's 2022-2026 Strategic Plan.⁵⁶⁵ See Chapter 4: Emerging Best Practices of this report for a more in-depth discussion regarding these FEMA's policy and procedural changes.

As a part of the federal response to disasters and their increasing numbers and intensity, the government has begun to implement more community buyout programs.⁵⁶⁶ It is estimated that the federal government purchases tens of thousands of flood-prone homes in more than 500 cities and towns across the nation. For many disaster survivors, these buyouts can be a boon, help them move from flood-prone areas and reduce the likelihood of being affected by future disasters. Research suggests, however, that when housing is the goal, these practices can lead to, or exacerbate, racial biases.⁵⁶⁷ The researchers explain that in part this is due to long histories of racial segregation in cities and how homes are evaluated and appraised. They found that in centralized counties, where these buyouts are increasingly occurring,

flood damage is not the only predictor of where buyouts occur. Racial composition matters too. It starts with whiter central counties and relatively whiter neighborhoods within those counties being more likely to gain access to federal buyout assistance. It ends with homeowners in neighborhoods of color being more likely to accept that assistance, making nonwhite neighborhoods in otherwise white counties the areas of greatest demolition, statistically... It brings more options and public resources to those

⁵⁶¹ Ibid.

⁵⁶² FEMA, *National Advisory Council Report to the FEMA Administrator*.

⁵⁶³ Ibid.

⁵⁶⁴ Ibid, at 17.

⁵⁶⁵ FEMA, “FEMA Announces Initial Initiatives to Advance Equity,” Jul. 21, 2021, <https://www.fema.gov/press-release/20210721/fema-announces-initial-initiatives-advance-equity>.

⁵⁶⁶ James Elliott, Phylcia Lee Brown, and Kevin Loughran, “Racial Inequities in the Federal Buyout of Flood-Prone Homes: A Nationwide Assessment of Environmental Adaptation,” *Socius: Sociological Research for a Dynamic World*, vol. 6, 2020, <https://journals.sagepub.com/doi/full/10.1177/2378023120905439>.

⁵⁶⁷ Ibid.

living in more socially advantaged spaces, especially if they own property, while leaving those in socially marginalized spaces more reliant on government assistance that is not only less likely to come but less trusted when it does.⁵⁶⁸

The Howell and Elliot study described above also found that in neighborhoods that receive new federal funds, demand for those houses increases.⁵⁶⁹ Since majority White neighborhoods are more likely to receive federal investment compared to majority Black neighborhoods, the latter often continues to struggle post-disaster. Further, Black residents may also be more likely to suffer additional financial hardships, such as losing a home or job post-disaster. The researchers assert that “the more aid an area receives from [FEMA], the more this inequality grows. FEMA aid – as currently administered – appears to exacerbate the problem.”⁵⁷⁰

The researchers, however, are not suggesting that FEMA is intentionally discriminating against Black residents. They suggest that these results are indicative of structural inequities in the real estate market, municipal finance, and the challenges of navigating federal bureaucracy.⁵⁷¹ Due to historical patterns of housing discrimination and less federal investment in counties with more nonwhite residents, there also may be less tax revenue from majority Black neighborhoods, which equates to fewer resources to navigate the complex application process to request FEMA grants, or less money to pay the local share that FEMA requires.⁵⁷² Additionally, the application process can be complicated, requiring documentation, internet access, and time which can be burdensome for those who may be temporarily displaced, whose lives are disrupted, and who could be struggling for child or elder care post-disaster.⁵⁷³

Racial disparities may also be found between homeowners and renters.⁵⁷⁴ For example, more money to rebuild communities after a disaster may increase property values, and as a result, price out lower-income renters. Since individual disaster assistance tends to benefit homeowners over renters, this can also negatively affect nonwhite residents, as people of color are more likely to be renters.⁵⁷⁵ When analyzing FEMA’s Harvey allocations, Texas Housers found that although renters and owners make up roughly equal percentages of the total applications that FEMA received, 84 percent of assistance went to homeowners and 16 percent was offered to renters.⁵⁷⁶ Subsequently, because FEMA assessments are the basis for subsequent CDBG-DR funding

⁵⁶⁸ Ibid.

⁵⁶⁹ Howell and Elliott, “Damages Done: The Longitudinal Impacts of Natural Hazards on Wealth Inequality in the United States.”

⁵⁷⁰ Ibid.

⁵⁷¹ Ibid.

⁵⁷² Flavelle, “Why Does Disaster Aid Often Favor White People?”

⁵⁷³ Ibid.

⁵⁷⁴ Ibid.

⁵⁷⁵ Ibid.

⁵⁷⁶ Orduña Statement, at 2.

allocations between homeowners and renters, the renter survivors, who are largely people of color, do not get a fair allocation of funds for their recovery needs.⁵⁷⁷

Low-income disparities

FEMA's National Advisory Council 2020 report, also highlighted racial and income-based disparities in the agency's program delivery.⁵⁷⁸ The report stated that FEMA's practice of basing damage assessments on property ownership "immediately focuses on the wealthier parts of a community, and disadvantages renters and the homeless population."⁵⁷⁹ It noted that some programs, such as the Public Assistance Program and the Individual Assistance Program benefit communities who can afford to pay the required cost matching, navigate the complexities of applications and coordination, and those with the time, income, and access. It also stated that the National Flood Insurance Program "inadvertently assists the wealthier segment of the population by serving only those who can afford to buy flood insurance."⁵⁸⁰ Francisco Sánchez, Jr., President of the Emergency Management Association of Texas, testified that "[t]he cost of flood insurance for vulnerable populations and those with a lower socio-economic status often prohibits the consideration of flood insurance entirely. National Flood Insurance Program policies must be paid for in lump sum, which can put flood insurance out of many residents' financial reach."⁵⁸¹ He also testified that residents who had access to money, credit, and had purchased flood insurance "were able to recover at a substantially faster rate, and more completely, than others."⁵⁸²

As discussed previously, low-income homeowners are more likely to live in flood-prone areas largely due to discriminatory housing practices and underinvestment.⁵⁸³ According to a study released by FEMA in April 2018, the agency found that the median income of those who purchased flood insurance was \$82,000, compared to \$55,000 for non-policyholders.⁵⁸⁴ This finding suggests that low-income homeowners are either choosing not to purchase the additional insurance or are unable to afford it. As a result, low-income homeowners may be given less federal assistance; and thus, are personally responsible for more repairs, which can be prohibitively expensive. Former FEMA Administrator, Craig Fugate stated that FEMA assistance is "not a safety net [and] people who qualify for FEMA grant dollars are not in good

⁵⁷⁷ Ibid.

⁵⁷⁸ FEMA, *National Advisory Council Report to the Administrator*.

⁵⁷⁹ Ibid, at 12.

⁵⁸⁰ Ibid.

⁵⁸¹ Sánchez Statement, at 6.

⁵⁸² Ibid, at 2.

⁵⁸³ See generally, *Texas SAC Advisory Memo*.

⁵⁸⁴ FEMA, "An Affordability Framework for the National Flood Insurance Program," Apr. 17, 2018, https://www.fema.gov/sites/default/files/2020-05/Affordability_april_2018.pdf.

financial situations in the first place. It's a bridge, but sometimes it's a bridge to nowhere if you aren't able to find other programs to meet your needs."⁵⁸⁵

The National Advisory Council report also found that some recovery programs “provide an additional boost to wealthy homeowners and others with less need, while lower-income individuals and others sink further into poverty after disasters.”⁵⁸⁶ The report also warns that some of FEMA's programs may be underserving communities of color. The authors claim that “through the entire cycle communities that have been underserved stay underserved and thereby suffer needlessly and unjustly.”⁵⁸⁷

Research suggests that there are strong correlations between recovery outcomes and the degree of social capital⁵⁸⁸ in a community.⁵⁸⁹ Studies have shown that communities with higher social capital tend to recover faster and have better overall outcomes, compared to those with lower degrees of social capital tend to suffer the effects longer and some never fully recover.⁵⁹⁰ The report stated:

Communities without a high degree of social capital struggle to effectively, efficiently, and equitably recover, because resources are prioritized to respond to higher value assets and communities first. At the same time, emergency management programs do not define, articulate, or emphasize the three critical areas of social capital in their plans, assessments, trainings, and educational programs. Without any emphasis on social capital in these program areas, there is no clear path forward for communities and emergency management agencies to measure their current status, identify gaps, and mitigate the factors that impede increasing social capital.⁵⁹¹

The National Advisory Council report also criticized FEMA's policies that connect funding based on damage. The authors stated that:

Overall, FEMA assistance is implemented such that people, municipalities, tribes, and states with relatively more resources can access the most program assistance... FEMA Public Assistance is affected by the social vulnerability of counties, which leads to inequitable outcomes in some circumstances. Those who do not have access to existing

⁵⁸⁵ Danny Vinik, “‘People just give up’: Low-income hurricane victims slam federal relief programs,” *Politico*, May 29, 2018, <https://www.politico.com/story/2018/05/29/houston-hurricane-harvey-fema-597912>.

⁵⁸⁶ FEMA, *National Advisory Council Report to the Administrator*, at 6.

⁵⁸⁷ *Ibid.*, at 12.

⁵⁸⁸ Social capital is generally defined as the relationships or networks, and other social assets of a group that can be leveraged to gain advantage. *See e.g.*, Nan Lin, Karen Cook, and Ronald Burt (eds.) *Social Capital: Theory and Research*, New York: Routledge, 2017.

⁵⁸⁹ FEMA, *National Advisory Council Report to the Administrator*.

⁵⁹⁰ *Ibid.*

⁵⁹¹ *Ibid.*, at 15 (internal citations omitted).

resources, information or technology are less able to access necessary programs for preparation, mitigation, response, and recovery than they should be entitled to, and there is not a clear standard by which to assess need in communities.⁵⁹²

Federal, state, and local recovery efforts may actively contribute to displacement by failing to provide survivors with meaningful choices to rebuild resiliently, relocate, or improve infrastructure (such as storm drainage, floodplain management, and other common mitigation measures) in their disaster-affected communities. This leaves low-income survivors at greater risk for future disasters than they were prior to the disaster,⁵⁹³ and 450,000 of the nation's affordable homes are located in flood-prone areas.⁵⁹⁴ A recent report by the National Low Income Housing Coalition and the Public and Affordable Housing Research Corporation (PAHRC) found that nearly one-third of federally-assisted housing stock is located in areas with very high or relatively high risk of negative impacts from natural hazards, as compared to one-quarter of all renter-occupied homes and 14 percent of owner-occupied homes.⁵⁹⁵ Displacement as a result of lagging relief aid was seen in Loíza, Puerto Rico, a town that is majority Black and with 53 percent of residents living below the poverty line.⁵⁹⁶ According to the 2020 Census, Loíza experienced a 21 percent reduction in its population.⁵⁹⁷ More than 3,000 homes in Loíza were left without roofs or were damaged to the point that they were unsafe to live in.⁵⁹⁸ A more in-depth discussion of María's effects on this community is discussed in Chapter 3.

FEMA analyzed 4.8 million aid applicants that were submitted from disaster survivors between 2014 and 2018, finding that the poorest renters were 23 percent less likely than those with higher incomes to receive housing assistance.⁵⁹⁹ When lower-income homeowners received aid, they received about half as much to rebuild their homes compared to higher-income homeowners, even after controlling for relative repair costs. FEMA was about twice as likely to deny housing assistance to lower-income disaster survivors because the agency deemed the damage to their homes to be "insufficient."⁶⁰⁰ (see Table 2 below)

⁵⁹² Ibid, at 13 (internal citations omitted).

⁵⁹³ Yentel Statement, at 11.

⁵⁹⁴ Ibid, at 15.

⁵⁹⁵ Ibid.

⁵⁹⁶ Rosario-Méndez Statement, at 2.

⁵⁹⁷ Ibid, at 3.

⁵⁹⁸ Ibid.

⁵⁹⁹ Willis Statement, at 2.

⁶⁰⁰ Hersher, "Why FEMA Aid Is Unavailable To Many Who Need It The Most."; *see also* Willis Statement, at 2-3.

Table 2 FEMA Denial Rates

Applicant Group	Lower Income ¹	Higher Income ²	Difference
Owners denied aid for repair/replacement	30%	13%	17 pts.
Owners denied rental aid	30%	13%	17 pts.
Renters denied rental aid	42%	27%	15 pts.
Owner denied aid for personal property	50%	44%	6 pts.
Renters denied aid for personal property	36%	31%	5 pts.

¹ FEMA classified applicants as having “lower incomes” if their income was less than 80% of the median income where they lived.

² FEMA classified applicants as having “higher income” if their income was more than the median income where they lived.

Source: Rebecca Hersher, “Why FEMA Aid Is Unavailable To Many Who Need It The Most,” NPR, June 29, 2021 (citing: Internal FEMA report obtained by NPR).

NPR reported that according to an internal FEMA report, the agency recommended that it should evaluate whether the inspection process could be a contributing factor to these disparities.⁶⁰¹ When an individual applies for assistance, a FEMA inspector calls, texts, or emails the homeowner to schedule an appointment for inspection within 3-30 days. FEMA inspectors are contractors (either through Vanguard EM or PB Disaster Service)⁶⁰² who earn approximately \$50 per case and take about 30 minutes per house. The inspectors are expected to determine if the home is safe, sanitary, livable, and verify that the damage was caused by the disaster.⁶⁰³ The cause of the damage, however, is not always apparent. For instance, if a roof was torn off during a hurricane, but was needing repair prior, an inspector could determine that the cause of the damage was lack of maintenance, and not the hurricane, and thus deny the applicant federal funds to repair their home.⁶⁰⁴

⁶⁰¹ Hersher, “Why FEMA Aid Is Unavailable To Many Who Need It The Most.”

⁶⁰² FEMA, “Employment as a home inspector with FEMA?” Feb. 5, 2020, <https://www.fema.gov/faq/employment-home-inspector-fema>.

⁶⁰³ FEMA, “FEMA Home Inspection Part of Disaster Assistance Process,” Jan. 8, 2021, <https://www.fema.gov/fact-sheet/fema-home-inspection-part-disaster-assistance-process> (last updated Mar. 17, 2021); *see also*, FEMA, *Individual Assistance Program and Policy Guide*.

⁶⁰⁴ FEMA, *Individual Assistance Program and Policy Guide*.

Before Harvey, a federal court found it to be illegal for FEMA to use a certain home standard pre-disaster, known as “deferred maintenance,” as a disqualifying factor for a resident to receive aid.⁶⁰⁵ However, during the Harvey recovery process, FEMA continued to apply the same standard using the term “pre-existing conditions.”⁶⁰⁶ Director of the Disaster Recovery and Fair Housing Project for Texas Appleseed, Maddie Sloan, testified before the Texas State Advisory Committee to the Commission that

FEMA also has a documented history of denying claims based on alleged deferred maintenance and pre-existing conditions, and despite a lawsuit out of Texas, which they settled, saying they would not use these rules to evaluate homes, they were still doing so after Hurricane Harvey, which is obviously particularly prevalent in low-income neighborhoods, neighborhoods of color, and where homeowners have limited English proficiency.⁶⁰⁷

One legal case documenting residents' interaction with inspectors and trying to access federal assistance found that homeowners reported “antagonistic interactions” with inspectors, inspectors making “little to no attempt to communicate with residents,” and some inspectors “not leaving their cars to assess the damage up close.”⁶⁰⁸ This led claimants to argue that “it became clear that the inspectors' incentive was to complete inspections quickly because they were paid per inspection.”⁶⁰⁹ In addition, DHS' Office of Civil Rights and Civil Liberties (CRCL) has received complaints from disaster survivors alleging FEMA housing inspectors did not provide language access for LEP persons and communication access, namely American Sign Language interpreters, for deaf applicants. Moreover, while a homeowner may appeal a denial with FEMA, many low-income residents cannot afford the appeal process.⁶¹⁰

Furthermore, GAO reported in 2020 that FEMA's requirement for survivors first to be denied an SBA disaster loan before receiving certain types of IHP assistance may prevent some applicants, particularly low-income applicants who are less likely to qualify for an SBA loan, from receiving

⁶⁰⁵ Ibid.

⁶⁰⁶ Ibid.

⁶⁰⁷ Maddie Sloan, Director, Disaster Recovery and Fair Housing Project for Texas Appleseed, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Aug. 20, 2020, at 4 [on file].

⁶⁰⁸ See Complaint for Injunctive Relief, *LUPE et al. v. FEMA*, 141 F.Supp.3d 681 (S.Distr. of Texas 2008) (No. 08-CV-00487); see also, Danielle Zoe Rivera, Bradleigh Jenkins, and Rebecca Randolph, “Procedural Vulnerabilities and Its Effects on Equitable Post-Disaster Recovery in Low-Income Communities,” *Journal of the American Planning Association*, 2021, <https://www.tandfonline.com/doi/epub/10.1080/01944363.2021.1929417?needAccess=true>.

⁶⁰⁹ See *LUPE et al. v. FEMA*, Plaintiff's motion for summary judgement, (S.Distr. of Texas, 2014), pp. 18-19.

⁶¹⁰ Danielle Zoe Rivera, Bradleigh Jenkins, and Rebecca Randolph, “Procedural Vulnerabilities and Its Effects on Equitable Post-Disaster Recovery in Low-Income Communities,” *Journal of the American Planning Association*, 2021, <https://www.tandfonline.com/doi/epub/10.1080/01944363.2021.1929417?needAccess=true>.

these types of grants, as FEMA did not fully explain this requirement to survivors.⁶¹¹ It may be that these individuals believe they would not qualify for a loan, or do not think they should take on more debt from an SBA loan.⁶¹² There can be confusion as to the need for survivors to apply for SBA for long-term recovery assistance. One Harvey survivor questioned the need to apply for an SBA loan when she was not a small business, and also indicated not wanting to take out a loan until she knew it could be paid back.⁶¹³ In Puerto Rico, a survivor indicated at the December 2021 briefing that he still had not been able to begin paying back his SBA loan needed to repair his home.⁶¹⁴ GAO identified tens of thousands of potentially low-income IHP applicants who FEMA referred to the SBA but did not submit an SBA loan application; therefore, FEMA could not consider the applicants for personal property assistance under its process.⁶¹⁵ As a result, FEMA could not determine if these applicants qualified for assistance due to this process.⁶¹⁶ This led to losses that FEMA verified totaling \$310 million.⁶¹⁷ GAO stated that while 47 to 58 percent of these applicants received other types of IHP assistance that did not require the approval of an SBA loan, FEMA's eligibility process may have limited applicants' access to the IHP program.⁶¹⁸ As such, GAO recommended that FEMA assess this process to ensure that all disaster survivors have equal access to IHP assistance programs and work in conjunction with the SBA to simplify and streamline the application process.⁶¹⁹

⁶¹¹ GAO, *Disaster Assistance: Additional Actions Needed to Strengthen FEMA's Individuals and Households Program*, Sept. 30, 2020, <https://www.gao.gov/products/gao-20-503>; see also Currie Statement.

⁶¹² Kimberly Blair, "FEMA leaves rental property owners in the dust," *Pensacola News Journal*, May 24, 2014, <https://www.pnj.com/story/news/2014/05/24/fema-didaster-aide/9552621/>.

⁶¹³ Stacy Cowley, "Harvey Victims Face Hurdles, and Maybe Bill, in Getting Aid," *The New York Times*, Aug. 30, 2017, <https://www.nytimes.com/2017/08/30/business/harvey-aid-sba-disaster-loans.html>.

⁶¹⁴ William Rosado Ramos, *Puerto Rico Briefing Public Session*, p. 246.

⁶¹⁵ GAO, *Disaster Assistance: Additional Actions Needed to Strengthen FEMA's Individuals and Households Program*.

⁶¹⁶ Currie Statement, at 2.

⁶¹⁷ *Ibid.*

⁶¹⁸ *Ibid.*

⁶¹⁹ *Ibid.*

Chapter 3: Federal Response to Hurricanes Harvey and María

This chapter describes the federal government’s specific responses to Hurricanes Harvey and María and provides a comparison of the responses between the two storm systems. It also reviews challenges faced by the federal government in delivering aid and concludes with a discussion of efforts by the federal government to comply with the Stafford Act.

Hurricane Harvey

Disaster Declaration Proceedings

On August 23, 2017, Texas Governor Greg Abbot issued a disaster proclamation certifying that Harvey posed a threat of imminent disaster for thirty counties,⁶²⁰ and added additional counties to the proclamation on August 26, August 27, August 28, and September 14.⁶²¹ On August 25, 2017, President Donald Trump approved the Texas disaster declaration,⁶²² which paved the way for FEMA to make available federal funding to affected individuals.⁶²³ Forty-six counties were declared eligible for public assistance and 39 counties were declared eligible for individual assistance.⁶²⁴ All counties in Texas were deemed eligible for the Hazard Mitigation Grant Program.⁶²⁵

On September 2, 2017, President Trump made additional disaster assistance available to Texas by authorizing an increase in federal funding on certain eligible costs. President Trump authorized 90 percent federal cost sharing for debris removal, and 100 percent federal cost sharing for emergency protective measures for 30 days from the start of the incident period, then a 90 percent federal cost share thereafter.⁶²⁶ Prior to the September 2 amendment, the federal government covered 75 percent of the cost-sharing for these costs.⁶²⁷ After the President’s disaster declaration, Texas submitted a request for direct housing assistance, seeking approval to administer the direct housing program using all available options through the use of an

⁶²⁰ Greg Abbott, “Disaster Proclamation Issued for 30 Texas Counties in Anticipation Of Tropical Depression Harvey Making Landfall,” Aug. 23, 2017, <https://gov.texas.gov/news/post/Disaster-Proclamation-Issued-For-30-Texas-Counties-in-Anticipation-Of-Tropical-Depression-Harvey-Making-Landfall>.

⁶²¹ Greg Abbott, “Governor Abbott Renews Hurricane Harvey Disaster Declaration for May 2021,” May 5, 2021, <https://gov.texas.gov/news/post/governor-abbott-renews-hurricane-harvey-disaster-declaration-for-may-2021>.

⁶²² Trump White House Archives, “President Donald J. Trump Approves Texas Disaster Declaration,” Aug. 25, 2017, <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-approves-texas-disaster-declaration/>.

⁶²³ FEMA, “President Donald J. Trump Approves Major Disaster Declaration for Texas,” Aug. 25, 2017, <https://www.fema.gov/press-release/20210318/president-donald-j-trump-approves-major-disaster-declaration-texas>.

⁶²⁴ FEMA, “Initial Public Notice for DR-4332-TX,” Sept. 26, 2017, <https://www.fema.gov/disaster-federal-register-notice/initial-public-notice-dr-4332-tx>.

⁶²⁵ Ibid.

⁶²⁶ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, Supplemental at 105 [on file].

⁶²⁷ U.S. Dep’t of Homeland Security, “President Donald J. Trump Amends Texas Disaster Declaration,” Sept. 3, 2017, <https://www.dhs.gov/news/2017/09/03/president-donald-j-trump-amends-texas-disaster-declaration>.

Intergovernmental Service Agreement, to administer direct housing assistance.⁶²⁸ FEMA approved this request on September 10, 2017.⁶²⁹

FEMA's Overall Estimated Monetary Damages and Assessment of Impacts

The declarations for Texas following Harvey were expedited. Because of the severity of the disaster, the FEMA Regional Administrator waived the requirement for a Preliminary Damage Assessment prior to the release of funds.⁶³⁰ Instead, FEMA utilized the NOAA estimates of monetary damages and losses by hurricanes.⁶³¹ As discussed in Chapter 1, NOAA estimated the monetary damages from Harvey to be \$125 billion.⁶³² FEMA estimated that of the 25.2 million residents of Texas, approximately 30 percent of the population was affected by the hurricane.⁶³³

Timeline of Requests for Assistance, Relief & Rebuilding Aid Provided

On August 27, 2017, FEMA approved Transitional Sheltering Assistance (TSA) with a peak population of 24,454 households.⁶³⁴ The very first allotment of aid was disbursed on August 28, 2017, three days after landfall: \$976 in rental assistance.⁶³⁵ By September 1, FEMA had received more than 364,000 registrations for assistance, and had approved more than 103,000 totaling \$66.4 million,⁶³⁶ Over 51,000 claims for the National Flood Insurance Program (NFIP) had been submitted in Texas.⁶³⁷

By September 3, 2017, nine days after Harvey's landfall, FEMA had received 507,000 registrations for disaster assistance and had approved more than 161,000 of those registrations equating to \$114 million.⁶³⁸ Also as of September 3, the SBA had received 4,416 disaster loan applications, primarily for damaged homes, fielded more than 10,600 calls, completed 1,430 property damage inspections, and approved 120 disaster loans for a total of \$10.6 million.⁶³⁹

⁶²⁸ DHS OIG, *FEMA Initiated the Hurricane Harvey Direct Housing Assistance Agreement without Necessary Processes and Controls*, Jul. 6, 2021, p. 1, <https://www.oig.dhs.gov/sites/default/files/assets/2021-07/OIG-21-42-Jul21.pdf>; FEMA, Response to Affected Agency Review, May 16, 2022 [on file].

⁶²⁹ Ibid.

⁶³⁰ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 45.

⁶³¹ FEMA, *2017 Hurricane Season After-Action Report*, Jul. 12, 2018, p. 1, https://www.fema.gov/sites/default/files/2020-08/fema_hurricane-season-after-action-report_2017.pdf.

⁶³² NOAA, *Hurricane Harvey*, May 9, 2018, p. 9, https://www.nhc.noaa.gov/data/tcr/AL092017_Harvey.pdf.

⁶³³ FEMA *2017 Hurricane Season After-Action Report*, at 2.

⁶³⁴ Joint FEMA Statement, at 13.

⁶³⁵ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 56.

⁶³⁶ FEMA, "Federal Government Continues Response to Hurricane Harvey," Sept. 1, 2017, <https://www.fema.gov/press-release/20210318/federal-government-continues-response-hurricane-harvey>.

⁶³⁷ Ibid.

⁶³⁸ FEMA, "Hurricane Harvey Snapshot," Sept. 3, 2017, <https://www.fema.gov/press-release/20210318/hurricane-harvey-snapshot>. Media sources have indicated that nine days after Harvey, FEMA approved \$141.8 million in individual assistance, but OCRE was not able to independently confirm this.

⁶³⁹ Ibid.

More than 67,000 NFIP claims had been submitted, and more than \$2.9 million in advance payments have been issued to insured survivors.⁶⁴⁰

By September 22, 2017, 792,000 households had applied for assistance.⁶⁴¹ According to FEMA, within 30 days of September 5, more than \$1.5 billion in federal funds were provided to impacted Texans through assistance grants, low-interest disaster loans, and flood insurance advance payments.⁶⁴² Also within that time frame, 270,916 households were provided \$571.8 million for temporary housing, basic repairs, and other essential needs.⁶⁴³ More than 24,000 families were temporarily living in hotel rooms paid for by FEMA because their homes were uninhabitable, and more than 2,100 were in shelters until longer-term housing could be found.⁶⁴⁴ Texans filed more than 87,000 flood insurance claims and the National Flood Insurance Program made \$608 million in expedited claims payments.⁶⁴⁵

All congregate shelters closed on October 27, 2017, 63 days after landfall.⁶⁴⁶ Also by the end of October, the SBA had accepted 88,803 loan applications; of those, 21,571 had yet to be processed.⁶⁴⁷ By November 30, 2017, the number of SBA applications waiting to be processed had fallen to 7,066.⁶⁴⁸ Similarly, by November 30, the SBA had received a total of 99,863 disaster applications and had approved 33,358 loans, totaling \$2.7 billion.⁶⁴⁹ The application deadline to apply for a loan to repair or replace property with physical damage resulting from Harvey was November 30, 2017, and the economic injury disaster loan application deadline was May 2018.⁶⁵⁰ Additionally, all households were transitioned out of TSA by June 30, 2018.⁶⁵¹

FEMA reported to the Commission that in the first 90 days following the August 25 declaration, FEMA Public Assistance expedited and obligated \$491,741,192.30 supporting a variety of subrecipients for Emergency Protective Measures, Debris Removal, and Sheltering. This total included \$130,857,147.92 to the Texas Division of Emergency Management to support management costs and Emergency Protective Measures.⁶⁵²

⁶⁴⁰ Ibid.

⁶⁴¹ Federal Emergency Management Agency, "Historic Disaster Response to Hurricane Harvey in Texas," Sept. 22, 2017, <https://www.fema.gov/press-release/20210318/historic-disaster-response-hurricane-harvey-texas>.

⁶⁴² Ibid.

⁶⁴³ Ibid.

⁶⁴⁴ Ibid.

⁶⁴⁵ Ibid.

⁶⁴⁶ Joint FEMA Statement, at 13.

⁶⁴⁷ U.S. Small Business Administration Office of Inspector General (herein SBA OIG), *Inspection of SBA's Initial Disaster Assistance Response to Hurricane Harvey*, Jan. 19, 2018, p. 1, https://www.sba.gov/sites/default/files/2019-07/SBA_OIG_Report_18-10.pdf.

⁶⁴⁸ Ibid.

⁶⁴⁹ Ibid.

⁶⁵⁰ Ibid.

⁶⁵¹ Joint FEMA Statement, at 13.

⁶⁵² FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 24.

According to FEMA, as of June 15, 2021, the most recent allotment of aid disbursed was in January 2021: \$3,688 in one payment for rental assistance.⁶⁵³ FEMA had received a total of 895,636 requests for assistance, the vast majority of which were approved (890,938 or 99.5 percent).⁶⁵⁴ FEMA referred 740,541 (83.1 percent) to the IHP program, and of those, 373,150 (50.4 percent) were approved for IHP financial assistance.⁶⁵⁵ Breaking these numbers down as of February 24, 2020, GAO found that, for those who were not approved for IHP financial assistance, 273,933 were found ineligible, 44,811 lacked insurance preventing a decision from being made, 48,647 withdrew their applications, and 10 were still pending.⁶⁵⁶

FEMA awarded a total of \$1.66 billion in IHP financial assistance following Harvey, and the majority of this assistance went to assisting survivors with securing rentals and home repairs.⁶⁵⁷ Demographic breakdown of IHP assistance is reflected in Table 3 below.

Table 3 Hurricane Harvey - Referred Applicants and Approval Rates

Group	Number	Approval (percentage)
All referred applicants	740,551	
Ownership status		
Homeowner	384,370	51.9
Renter	351,840	47.51
Age		
Under 25	60,300	8.14
25 to 49	404,030	54.55
50 to 64	183,838	24.82
65 and older	90,175	12.17
Gross annual income		
Less than \$10k	107,362	14.49
\$10k to less than \$25k	158,017	21.34
\$25k to less than \$50k	165,138	22.3
\$50k and above	190,312	25.69
Federal poverty guidelines*		
100% or below	196,428	26.52
Above 100% to 200%	157,569	21.27
Above 200% to 300%	96,350	13.01
Above 300%	170,482	23.02

⁶⁵³ Ibid, at 56.

⁶⁵⁴ Ibid, at 45.

⁶⁵⁵ Joint FEMA Statement, at 5.

⁶⁵⁶ Currie Statement, at 7-8.

⁶⁵⁷ Ibid.

Property insurance coverage			
	No coverage	425,943	57.52
	Personal property only	61,193	8.26
	Real and personal property	253,303	34.2
Flood insurance coverage			
	No coverage	650,661	87.86
	Coverage	89,890	12.14
Social Vulnerability Index**			
	Overall-least vulnerable	101,769	13.74
	Overall-most vulnerable	318,380	42.99
	Socioeconomic-least vulnerable	122,954	16.6
	Socioeconomic-most vulnerable	259,213	35
	Household composition and disability-least vulnerable	129,245	17.45
	Household composition and disability-most vulnerable	217,766	29.41
	Minority status and language-least vulnerable	31,353	4.23
	Minority status and language-most vulnerable	435,896	58.86
	Housing and transportation-least vulnerable	140,950	19.03
	Housing and transportation-most vulnerable	217,238	29.33

*The federal poverty guidelines represent a household income for different household sizes and locations and are used to determine financial eligibility for certain federal programs.

**The CDC Social Vulnerability Index indicates the relative social vulnerability of census tracts in the U.S. and Puerto Rico.

Source: Currie Statement at 8; table recreated by Commission staff.

For Housing Assistance (HA), 172,586 applications were deemed eligible from 619,781 referrals, and the average amount of HA provided per approved application was \$7,203.67.⁶⁵⁸ The total HA provided was \$1,243,252,850.20.⁶⁵⁹ The average amount of repairs, by comparison, was \$9,794.⁶⁶⁰ The rental amount paid to Harvey survivors was over \$330 million, and the average amount provided for rental assistance was \$6,461.37. Under Direct Housing, FEMA provided 3,514 temporary housing units (see Table 8, comparing the response to Harvey

⁶⁵⁸ FEMA Supplemental Testimony FIDA 38861 Program Summary.

⁶⁵⁹ Ibid.

⁶⁶⁰ Ibid.

and María). There were also 9,143 Group Flood Insurance Policies paid for, totaling \$5,485,000 in aid.⁶⁶¹

In total, FEMA obligated \$4 billion in assistance following Harvey (combining Individual Assistance, Public Assistance, and Hazard Mitigation Grants), FEMA obligated \$2,506,341,969.53 in Public Assistance,⁶⁶² and \$287,075,216.54 for the Hazard Mitigation Grant Program.⁶⁶³ Out of more than 19,000 projects, only 509 projects remain open.⁶⁶⁴

Table 4 below provides FEMA's funding obligations broken out across community categories. FEMA obligated a total federal share of \$45,811,117.63 to the Houston Housing Authority, which provides affordable homes and services to more than 60,000 low-income Houstonians, including 17,000 families, and 5,500 people living in 25 public housing units.⁶⁶⁵ FEMA obligated funds for 114 schools for a total of \$320,198,583.86.⁶⁶⁶ Funding included repairing/replacing damaged schools, campuses, athletics, fine arts, transportation, and temporary facilities. According to FEMA, certain districts, including Vidor Independent School District, Refugio Independent School District, and Port Arthur Independent School District have student bodies that are 65-75 percent economically disadvantaged.⁶⁶⁷ These three districts received a total of \$52,049,712.63.⁶⁶⁸ FEMA has assisted hospitals with recovery and repairs, and has contributed \$18,733,460.43 in funding. These funds go to the repair/replacement of facilities, clinics, and temporary facilities, as well as debris removal.⁶⁶⁹ Houston Methodist Hospital, one of Houston's leading hospitals, has received \$5,869,202.05 from FEMA.⁶⁷⁰ The City of Houston provided non-congregate sheltering to 897 families.⁶⁷¹ FEMA reimbursed the City \$3,365,044.96 (Federal Share).⁶⁷² Harris County provided 700 two-bedroom rental units to survivors in need of housing.⁶⁷³ FEMA reimbursed Harris County \$3,128,077.80 for these expenses (Federal Share).⁶⁷⁴

⁶⁶¹ Ibid.

⁶⁶² Joint FEMA Statement, at 3.

⁶⁶³ FEMA, "Texas Hurricane Harvey," last updated Jan. 14, 2021, <https://www.fema.gov/disaster/4332>.

⁶⁶⁴ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 45.

⁶⁶⁵ Ibid.

⁶⁶⁶ Ibid, at 47.

⁶⁶⁷ Ibid.

⁶⁶⁸ Ibid.

⁶⁶⁹ Ibid.

⁶⁷⁰ Ibid.

⁶⁷¹ Ibid.

⁶⁷² Ibid.

⁶⁷³ Ibid.

⁶⁷⁴ Ibid.

Table 4 FEMA Funding Obligations - Community Categories

	Obligated	Pending Obligation
Housing Authority	\$45,811,117.63	\$2,950,322.97
Independent School Districts/Public Schools/Schools	\$320,198,583.86	\$42,216,934.62
Hospitals/Clinics	\$18,733,460.43	\$3,991,208.06
Total	\$384,743,161.92	\$49,158,465.65

Source: Federal Emergency Management Agency, FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 46.

While federal funds are obligated by federal agencies, local governments are responsible for allocating these funds to affected counties and cities. On September 22, 2017, FEMA signed an Intergovernmental Service Agreement (IGSA) with the Texas General Land Office (GLO) to assist FEMA with administering the direct housing program.⁶⁷⁵ FEMA’s responsibilities included determining applicant eligibility, approving direct housing solutions, and providing GLO with technical assistance.⁶⁷⁶ GLO was responsible for procuring direct housing units, making permanent housing repairs, placing applicants into temporary housing, and monitoring their progress toward obtaining permanent housing.⁶⁷⁷

GLO developed a distribution schema known as the “Methods of Distribution” (MOD) for housing and building infrastructure to prepare for future disasters. The MODs used census data, FEMA Individual Assistance data, FEMA Public Assistance data, and measurements of the impact of Harvey to determine where to distribute the funds.⁶⁷⁸

GLO also established a minimum grant award of \$1 million, which meant that small cities that submitted assistance requests for \$1 million or more received disproportionately large amounts of disaster relief funds and other cities may not have received enough funds to fully recover. For example, officials reported that Taylor Landing (a city with about 230 residents, of which 87.3 percent are White) with a median income of \$45,390 and with 22 people (9 percent) impacted,

⁶⁷⁵ DHS OIG, *FEMA Initiated the Hurricane Harvey Direct Housing Assistance Agreement without Necessary Processes and Controls*, Jul. 6, 2021, p. 1, <https://www.oig.dhs.gov/sites/default/files/assets/2021-07/OIG-21-42-Jul21.pdf>

⁶⁷⁶ Ibid.

⁶⁷⁷ Ibid, at 1-2.

⁶⁷⁸ *Texas SAC Advisory Memo*, at 6-7.

was obligated \$1.3 million or over \$151,495 per home (\$60,598 per impacted person).⁶⁷⁹ Comparatively, Port Arthur (a city with about 54,000 residents, of which 38.2 percent are Black, 31.8 percent are Latinx, and 22 percent are White) with a median income of \$32,000 and with almost 50,000 residents (93 percent) impacted, was obligated \$4.1 million which equates to about \$84 per affected individual. Additionally, in Beaumont (a city that is 48 percent Black, 14.4 percent Latinx, and 34 percent White), the figure was \$41.22.⁶⁸⁰ Some of these differences are due to small communities with primarily marginalized communities not having the resources or expertise to prepare funding proposals, or apply for needed assistance in amounts less than \$1 million, which eliminated them from the process.⁶⁸¹ In written testimony to the Texas State Advisory Committee to the Commission, Intergovernmental Relations for GLO, Sarah Douglas however, dismissed claims of racial disparities and explained that of the 22 cities and counties that received funds, Port Arthur received the highest allocation.⁶⁸² Douglas also noted that “each city and county must spend at least 70 percent of their funds to benefit low- and moderate-income persons.”⁶⁸³

GLO’s MOD also required that cities and counties must allocate at least 70 percent of their funds to benefit low- and moderate-income residents. However, the Southeast Texas Regional Planning Commission (SETRPC) which worked with GLO at the local level to allocate funds to affected counties and cities, did not have the same requirement. Its MOD was found to disproportionately benefit higher-income, small, and primarily White communities.⁶⁸⁴ According to Amelia Adams, a fair housing and disaster recovery expert with the Texas Low Income Housing Information Service, the process by which funds were distributed focused more on location than the affected residents. This means that poorer and often majority-minority communities, which are also the most at-risk after a disaster, may not have received the amount of aid they needed to successfully recover.⁶⁸⁵

Disaster and recovery experts are concerned not only about the allocation of funds from FEMA, but from other federal agencies as well. For instance, the lack of formal authorization of HUD CDBG-DR programs contributed to delays in funding. Without authorization, HUD operates program funding through separate Federal Register notices after every major disaster, causing uncertainty for grantees.⁶⁸⁶ In the case of Harvey, HUD allocated more than \$5 billion in CDBG-

⁶⁷⁹ Karen Paup, Co-Director, Texas Housers & Texas Low Income Housing Information Service, Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights, Nov. 11, 2020, at 2 (herein Paup Statement).

⁶⁸⁰ Paup Statement, at 2; Kriston Capps, “Why Are These Tiny Towns Getting So Much Hurricane Harvey Aid?” *Bloomberg News*, Oct. 3, 2018, <https://www.bloomberg.com/news/articles/2018-10-03/hurricane-harvey-recovery-aid-shows-racial-disparities>.

⁶⁸¹ *Texas SAC Advisory Memo*, at 7.

⁶⁸² Sarah Douglas, Intergovernmental Relations, Texas General Land Office, Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights, Jan. 15, 2021, at 1.

⁶⁸³ *Ibid.*

⁶⁸⁴ *Texas SAC Advisory Memo*, at 7.

⁶⁸⁵ Capps, “Why Are These Tiny Towns Getting So Much Hurricane Harvey Aid?”

⁶⁸⁶ Yentel Statement, at 14.

DR funds for Texas;⁶⁸⁷ and Southeast Texas (which was the heaviest hit) was set to receive \$157 million through that program.⁶⁸⁸ While HUD is responsible for obligating the funds, state officials ultimately determine how to allocate the funds to local governments. As a result, this process may then favor certain counties over others and result in an inequitable distribution of federal funds and leave cities and counties that were struggling prior to the disaster unable to fully recover months or even years after a disaster occurs.⁶⁸⁹

Since the distribution schema developed by state and local officials does not take into account population size, this could create large disparities (see Figure 4 below). SETRPC's MOD plan utilized storm impact as the variable to determine aid. In the Southeast Texas region, SETRPC used "rising water" as the only factor selected, specifically identifying homes and properties that experienced more than six inches of flooding. However, the organization did not consider if a home was flooded or entirely destroyed. Moreover, while the MOD plan took population size into consideration, the schema was based on population percentages – which means it cannot differentiate between a town with hundreds of residents compared to a city with thousands.⁶⁹⁰ For instance, Taylor Landing, with a median household income of \$69,000 and a poverty rate of zero percent, saw 22 residents affected by Harvey and stood to receive \$1.3 million, approximately \$60,000 per affected resident.⁶⁹¹ Comparatively, the 142,000 combined residents of Port Arthur and Beaumont that were affected by Harvey were allocated slightly fewer funds totaling \$7.9 million.⁶⁹² Director of Recovery and Fair Housing for Texas Appleseed, Madison Sloan explains that the method of fund distribution is "blatantly inequitable and inconsistent with damage data. Port Arthur will receive only about twice as much funding as cities with less than 1 percent of its population. Beaumont will receive less than twice the funding of cities that are 0.5 percent of its size."⁶⁹³

⁶⁸⁷ HUD, "HUD Approves \$5 Billion Texas Disaster Recovery Plan," Jun. 25, 2018, <https://archives.hud.gov/news/2018/pr18-060.cfm>.

⁶⁸⁸ Capps, "Why Are These Tiny Towns Getting So Much Hurricane Harvey Aid?"

⁶⁸⁹ Ibid.

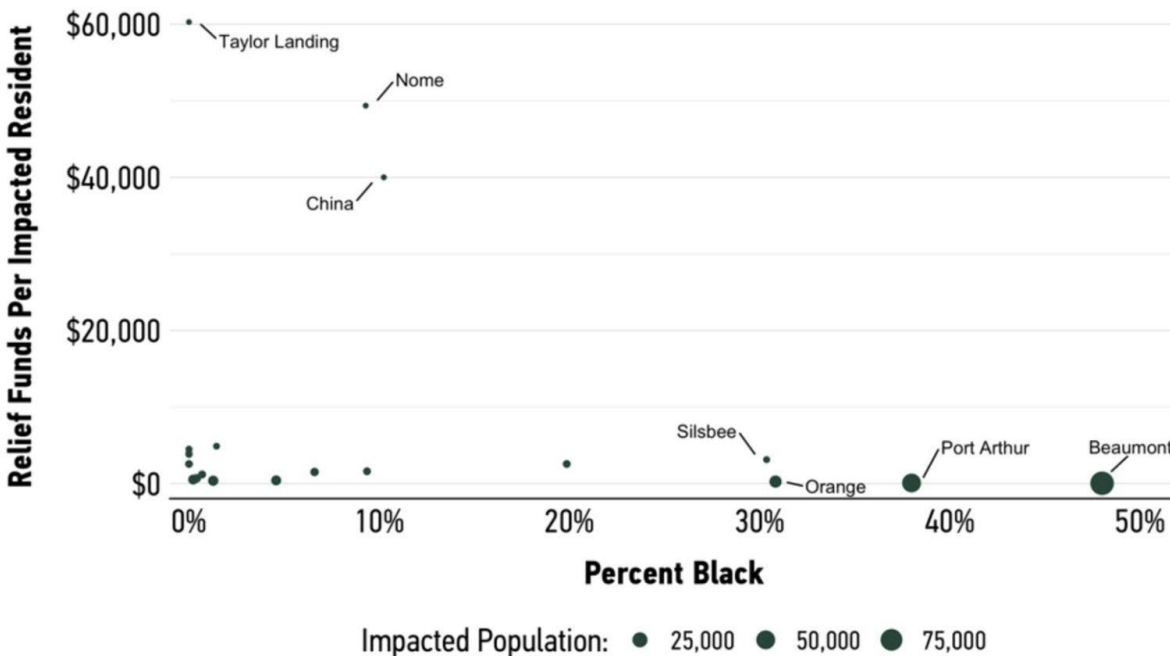
⁶⁹⁰ Ibid.

⁶⁹¹ Ibid.

⁶⁹² Ibid.

⁶⁹³ Letter from Madison Sloan, Director, Disaster Recovery and Fair Housing Project at Texas Appleseed to Shaun Davis, Executive Director at Southeast Texas Regional Planning Commission, *Re: Texas Appleseed Comments on SETRPC's Hurricane Harvey Round 1 Method Distribution*, Jul. 20, 2018, <https://www.texasappleseed.org/sites/default/files/7-20-18%20TA%20comments%20on%20SETRPC%20MOD.pdf>

Figure 4 Harvey Aid Distribution



Source: Kriston Capps, “Why Are These Tiny Towns Getting So Much Hurricane Harvey Aid?” Bloomberg News, Oct. 3, 2018

The main issue with the funding schema is how the funds are distributed. With a finite amount of funds, the state’s requirement that disbursements start at \$1 million does not adequately address the needs of those residents in the hardest hit areas, such as those living in the Golden Triangle counties (i.e., Orange, Jefferson, and Hardin). The distribution formula is set up to grant too much aid to smaller towns and too little to larger cities, and these larger cities are also home to more residents of color and more residents who are low-income. For instance, in China, Texas, which is majority White (86 percent) and has a population of 908 residents, of which 27 were affected by Harvey – received more than \$1 million or approximately \$40,000 per resident impacted by the storm. Nome, Texas, which is also majority White (89 percent) and has a population of 588, of which 23 residents were impacted, received \$49,000 per affected resident. Comparatively, in Beaumont, Texas, which is approximately 50 percent Black, more than three-quarters (92,000) of the city’s residents were impacted by Harvey and were allocated \$3.7 million in funds which equates to \$40 per affected resident.⁶⁹⁴

Furthermore, since competitive grant programs require exhaustive applications, they can be hard for low-income communities to complete due to a lack of staff, expertise, or the money to hire a

⁶⁹⁴ Capps, “Why Are These Tiny Towns Getting So Much Hurricane Harvey Aid?”

consultant.⁶⁹⁵ Cities with less tax revenue, such as Port Arthur, have fewer staff and other resources to navigate the complex process of seeking FEMA grants, and less money to pay the local share that FEMA requires.⁶⁹⁶

Amelia Adams with the Texas Low Income Housing Information Service contended that:

[T]he three cities with the highest [B]lack populations are also the three cities with the very lowest funding. And we know that those cities had a lot of people who were impacted who were extremely low income. The median income of people who applied for [FEMA aid] in Port Arthur was \$24,000 per year.⁶⁹⁷

In January 2022, however, HUD halted the distribution of \$1.95 billion that had been approved for flood mitigation projects following Harvey. HUD indicated that the GLO had not provided the necessary paperwork detailing how the money would be spent and that Texas has 45 days to provide that information. A spokesperson for the GLO indicated that the agency had provided the required paperwork, yet HUD was also requiring details of how money spent would assist communities at risk of natural disasters and climate change.⁶⁹⁸

Disaster Recovery Centers and Other Assistance Made Available

Before Harvey's landfall, FEMA had pre-positioned supplies and personnel in Texas.⁶⁹⁹ On September 2, 2017, FEMA announced that more than 30,000 federal staff had been deployed in support of the response to Harvey.⁷⁰⁰ Also by September 2, there were 270 shelters open in Texas.⁷⁰¹

By September 3, SBA provided 33 staff in the two Disaster Recovery Centers opened by FEMA, and opened a business recovery center.⁷⁰² As of September 5, 2017, there were four operational FEMA Disaster Recovery Centers: one in Jackson County, one in Harris County, one in

⁶⁹⁵ Thomas Frank, "FEMA climate grants pose challenge for poor communities," *E&E News*, Jun. 1, 2021, <https://www.eenews.net/articles/fema-climate-grants-pose-challenge-for-poor-communities/>.

⁶⁹⁶ Christopher Flavelle, "Why Does Disaster Aid Often Favor White People?" *The New York Times*, June 7, 2021, <https://www.nytimes.com/2021/06/07/climate/FEMA-race-climate.html>.

⁶⁹⁷ Capps, "Why Are These Tiny Towns Getting So Much Hurricane Harvey Aid?"

⁶⁹⁸ Associated Press, "Federal funding halted for Hurricane Harvey assistance," *AP News*, Jan. 8, 2022, <https://apnews.com/article/floods-hurricanes-texas-natural-disasters-george-p-bush-55a1d3c117a64acef0e405c8a429d375>.

⁶⁹⁹ FEMA, "Historic Disaster Response to Hurricane Harvey in Texas."

⁷⁰⁰ FEMA, "The Road to Recovery: The federal family's coordinated efforts to support survivors in the aftermath of Hurricane Harvey," Sept. 2, 2017, <https://www.fema.gov/press-release/20210318/road-recovery-federal-familys-coordinated-efforts-support-survivors>.

⁷⁰¹ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, Supplemental at 103 [on file].

⁷⁰² SBA OIG, *Consolidated Results of SBA's Initial Disaster Assistance Response to Hurricanes Harvey, Irma, and Maria*, Dec. 22, 2020, p. 6, <https://www.sba.gov/sites/default/files/2020-12/SBA%20OIG%20Report%202021-05.pdf>.

Colorado County, and one in Fayette County.⁷⁰³ One additional Disaster Recovery Center opened on September 27, 2017, in Nueces County.⁷⁰⁴ On October 5, 2017, two additional Disaster Recovery Centers opened (one in Orange County; one in Tyler County).⁷⁰⁵

By the end of October 2017, SBA's Office of Disaster Assistance had more than quadrupled its staff to 4,310 and operated 84 recovery centers.⁷⁰⁶ FEMA has indicated that they eventually had opened more than 100 disaster recovery centers across the impacted area using both fixed and mobile sites, and that these centers saw more than 200,000 visitors.⁷⁰⁷ FEMA deployed dozens of Disaster Survivor Assistance teams, who canvassed hard hit neighborhoods and contacted more than 500,000 survivors.⁷⁰⁸

FEMA procured and delivered over \$62.8 million of shelf-stable meals from October 2017 through February 2018 to meet short-term feeding shortfalls. This effort was in addition to meals and snacks provided by volunteer organizations.⁷⁰⁹ The peak shelter population for Harvey was 42,399 in 258 congregate shelters. All congregate shelters closed on October 27, 2017, 63 days after landfall. On August 27, 2017, FEMA approved Transitional Sheltering Assistance (TSA) with a peak population of 24,454 households. All households were transitioned out of TSA by June 30, 2018.⁷¹⁰

Barriers to Aid and Civil Rights Implications

The GAO reviewed the disaster assistance provided to survivors of the 2017 storms and concluded that FEMA needed to better support individuals with disabilities in their disaster assistance work.⁷¹¹ GAO reported that disaster-related information, which provides those affected by a disaster to make decisions about evacuating, sheltering, and returning home, was inaccessible to people with certain disabilities, particularly those with hearing impairments.⁷¹²

In Houston, a DHS listening session examining experiences related to the impacts of Harvey highlighted several topics regarding civil rights and liberties, including issues surrounding

⁷⁰³ FEMA, "Disaster Recovery Centers Open in Four Counties," Sept. 5, 2017, <https://www.fema.gov/press-release/20210318/disaster-recovery-centers-open-four-counties>.

⁷⁰⁴ FEMA, "Disaster Recovery Center Opens in Nueces County," Sept. 26, 2017, <https://www.fema.gov/press-release/20210318/disaster-recovery-center-opens-nueces-county>.

⁷⁰⁵ FEMA, "Disaster Recovery Centers to Open in Orange and Tyler Counties," Oct. 4, 2017,

<https://www.fema.gov/press-release/20210318/disaster-recovery-centers-open-orange-and-tyler-counties>.

⁷⁰⁶ SBA OIG, *Consolidated Results of SBA's Initial Disaster Assistance Response to Hurricanes Harvey, Irma, and María*, at 4.

⁷⁰⁷ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 49.

⁷⁰⁸ *Ibid.*

⁷⁰⁹ *Ibid.*, at 45.

⁷¹⁰ *Ibid.*

⁷¹¹ GAO, *Disaster Assistance: FEMA Action Needed to Better Support Individuals Who Are Older or Have Disabilities*, May 14, 2019, <https://www.gao.gov/products/gao-19-318>.

⁷¹² *Ibid.*, at 17.

communication access for people with disabilities.⁷¹³ For instance, deaf individuals were unable to connect with 911 for hours without being able to evacuate.⁷¹⁴ As a result, people with disabilities in different parts of the city were delayed in being rescued because no one could locate them.⁷¹⁵ Additionally, instructions on the FEMA application were described as obscure. There was no box on the form that says “disability” for persons who had disabilities to check or to identify what their needs were.⁷¹⁶ Blind people, deaf people, as well as those whose native language was not English all experienced difficulties filling out applications.⁷¹⁷

During Harvey, researchers found that neighborhoods with higher proportions of residents with disabilities (particularly with higher proportions of cognitive and ambulatory disabilities) were more likely to experience Harvey-induced flooding, and several assisted living facilities were flooded.⁷¹⁸ The Commission received testimony indicating that the Texas Department of Emergency Management did not allocate staff to target disability-related issues during Harvey.⁷¹⁹ Additionally, the Commission received a public comment from Stephanie Duke, a disability rights attorney, who stated that FEMA had denied individuals with disabilities meaningful access to FEMA programs as there was an absence of public-facing reasonable accommodations, as well as knowledgeable staff to assist in navigating an accommodation process.⁷²⁰

The National Council on Independent Living published a report in November 2017, which found that people with disabilities encountered barriers and problems trying to apply for assistance with FEMA.⁷²¹ Among nearly all submitted reports, there were significant problems with communication between emergency services and people with disabilities. This demonstrates that emergency services may need to become better educated on how to interact with people with disabilities and learn about making information more accessible.⁷²² More in-depth discussion of the DHS listening sessions is discussed in the comparison section of this report.

Another issue that arose for people with disabilities involved the use of institutional settings. The National Council on Independent Living reported that during recovery efforts post-disaster there

⁷¹³ Houston Recap.

⁷¹⁴ Ibid, at 1.

⁷¹⁵ Ibid, at 4.

⁷¹⁶ Ibid, at 9.

⁷¹⁷ Ibid.

⁷¹⁸ Laura Stough, Assistant Director, Center on Disability and Development, Texas A&M University, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas Briefing before the U.S. Comm’n on Civil Rights, Oct. 21, 2021, at 3 (herein Stough Statement).

⁷¹⁹ Ibid.

⁷²⁰ Stephanie Duke, Public Comment, Nov. 22, 2021 [on file].

⁷²¹ Andres Gallegos, Chairman, National Council on Disability, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights and Protections Following a Natural Disaster Briefing before the U.S. Comm’n on Civil Rights, Jun. 25, 2021, at 10 (herein Gallegos Statement).

⁷²² Ibid.

is a “trend of persons with disabilities who had lived in the community being transferred to institutional settings, either due to lack of post-shelter housing options or because of the difficulties of navigating disaster recovery.”⁷²³ The National Council on Disability maintained that this trend has continued unabated, in part because the issuance of waivers by the Centers for Medicare and Medicaid (CMS) that allows states to place disaster-impacted people with disabilities into institutional settings for the convenience of emergency managers and health care providers even though these individuals had not developed healthcare needs requiring hospital or nursing home level care.⁷²⁴ Lack of tracking and notification to families, combined with inadequate data, make documenting the number of people with disabilities institutionalized during and after disasters challenging, if not impossible. For example, CMS Minimum Data Set surveys do not identify or track nursing home admissions during evacuation; neither do states or territories.⁷²⁵ Figure 5 below indicates an uptick in nursing home admissions after Harvey’s landfall in Texas. This trend may serve as evidence of unjustified segregation of individuals with disabilities, and if in fact the case, would constitute discrimination in violation of Title II of the ADA. The lack of data, however, makes it difficult to definitively draw the conclusion that this practice following Harvey violated Title II and the *Olmstead* ruling.⁷²⁶ The Court in *Olmstead* held that public entities must provide community-based services to persons with disabilities when (1) such services are appropriate; (2) the affected persons do not oppose community-based treatment; and (3) community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability services from the entity.⁷²⁷

⁷²³ National Council on Disability, *Preserving Our Freedom: Ending Institutionalization of People with Disabilities During and After Disasters*, May 24, 2019, p. 10, <https://ncd.gov/publications/2019/preserving-our-freedom>.

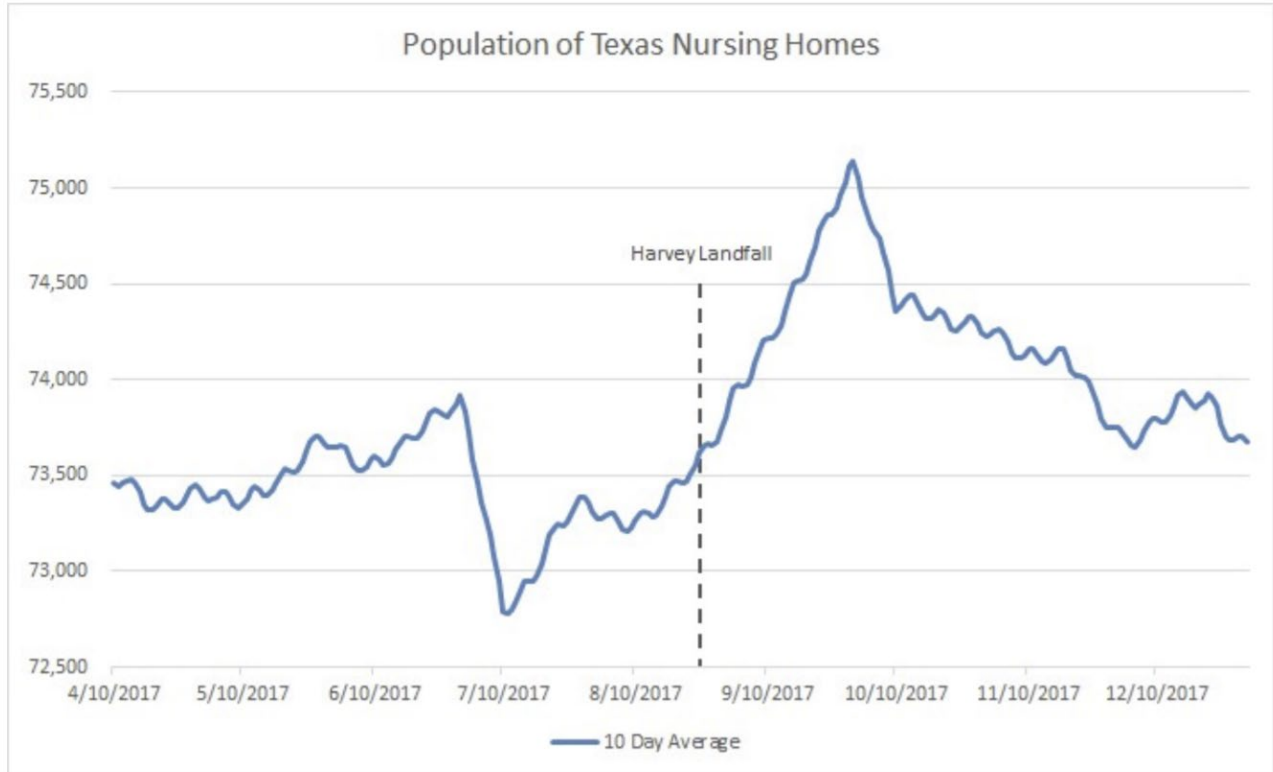
⁷²⁴ *Ibid.*

⁷²⁵ *Ibid.*, at 24.

⁷²⁶ 42 U.S.C. §12131; *Olmstead v. L.C.*, 527 U.S. 581(1999).

⁷²⁷ *Olmstead*, 527 U.S. at 607.

Figure 5 Nursing Home Admissions After Hurricane Harvey (TX)



Source: National Council on Disability, Preserving Our Freedom: Ending Institutionalization of People with Disabilities During and After Disasters, May 24, 2019, <https://ncd.gov/publications/2019/preserving-our-freedom>, p. 25.

FEMA told the Commission that during Harvey, FEMA deployed Disability Integration Advisors, Sign Language Interpreters, and Civil Rights Advisors. They advised disaster leadership and other FEMA program areas (such as Individual Assistance) to ensure program, facility, and communication access by proactively providing solutions, addressing the unmet needs of survivors, and responding to requests for reasonable accommodation.⁷²⁸ The Texas Advisory Committee to the Commission, however, received testimony from multiple individuals indicating that FEMA only deployed one person to serve as a liaison for the 410,000 people with disabilities in Harris County.⁷²⁹

Community members at DHS listening sessions frequently reported that FEMA provided applicants with insufficient aid. Additionally, some people with disabilities could not leave their homes to get to sites where they could apply for FEMA assistance. Reported reasons ranged from people being power-dependent and needing life-saving equipment in order to travel, roads being blocked and being unable to travel in wheelchairs, or people lacking conventional or

⁷²⁸ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 49.

⁷²⁹ Texas SAC Advisory Memo, at 13.

accessible transportation to get to the site.⁷³⁰ One Houston resident noted that there was a lack of accessible showers and other accessibility features at long-established shelters.⁷³¹ One community organization said that the shelters in Houston were generally not “conducive” to persons in wheelchairs.⁷³² In 2019, GAO reported entities that partner with FEMA described challenges providing assistance to individuals who are older or have disabilities following the 2017 hurricanes.⁷³³ According to stakeholders and FEMA officials, disability-related questions in the registration materials were confusing and easily misinterpreted. For example, FEMA’s registration process did not include an initial question that directly asks individuals if they have a disability or if they would like to request an accommodation for completing the application process.⁷³⁴

According to FEMA, during Harvey, it provided program access through online services, Disaster Recovery Centers (DRC), telephone services, and door-to-door Disaster Survivor Assistance (DSA) outreach efforts, which allowed persons unable to travel or leave their homes the opportunity to register for FEMA assistance.⁷³⁵ Individual Assistance teams also assembled an Unmet Needs Task Force to address disclosed medical needs and respond to requests for reasonable accommodations or modifications. FEMA told the Commission that it also conducted site inspections on every public-facing facility to ensure facility access for persons with disabilities. Moreover, Disability Integration Advisors (DIADs) and Civil Rights Advisors (CRADs) provided technical assistance and recommended solutions to ensure that FEMA facilities were accessible to the public. However, survivors of past disasters reported that FEMA did not always effectively provide sign language interpreters or other services to assist people with hearing impairments.⁷³⁶ In Houston, FEMA told survivors that interpreters were present at the disaster recovery shelters, however, deaf survivors arrived only to wait for hours for an ASL interpreter to arrive before being able to communicate effectively.⁷³⁷ It was noted that a FEMA town hall for the deaf community worked well, however, and that there was a need to put those practices in place in advance of a disaster.⁷³⁸

FEMA wrote to the Commission that “Disaster related information was disseminated through numerous methods and outreach events, including the agency’s website and on social media, through radio, Speakers Bureaus, newspaper articles, videos in sign language on FEMA’s YouTube page, and informational flyers in alternate formats and in several languages, including

⁷³⁰ Gallegos Statement, at 7.

⁷³¹ Houston Recap, at 7.

⁷³² Ibid, at 8.

⁷³³ GAO, *Disaster Assistance: FEMA Action Needed to Better Support Individuals Who Are Older or Have Disabilities*.

⁷³⁴ Ibid.

⁷³⁵ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 49-50.

⁷³⁶ Houston Recap, at 9.

⁷³⁷ Ibid.

⁷³⁸ Houston Recap, at 3.

Spanish.”⁷³⁹ However, in Texas, three in ten residents surveyed indicated that it was very or somewhat difficult to find information about recovery assistance in Spanish following Harvey.⁷⁴⁰

FEMA indicated that requests for alternate formats were responded to by Individual Assistance, including requests for large print on letters regarding a FEMA application.⁷⁴¹ Regarding social media, participants at the listening session shared that something that worked well was a disaster nonprofit establishing a Facebook page that acted as an important source of information for deaf survivors, so they would not have to communicate with the inaccessible 911 system.⁷⁴²

FEMA reported that during the Harvey response, it was critical to deploy interpreters to ensure communication access during press conferences and outreach events, and that Sign Language Interpreters were readily available to accompany Disaster Survivor Assistance teams during home visits and interpreters were often stationed in DRCs. Individual Assistance arranged for interpreters to accompany site inspectors to interpret home inspections, but only upon request.⁷⁴³ In addition, FEMA Sign Language Interpreters provided communication training for staff and worked with local interpreters and disability partners to ensure effective messaging and outreach to the local Deaf and hard-of-hearing communities. Video Remote Interpreting equipment was available in Disaster Recovery Centers if an in-person sign language interpreter was not readily available. Other communication devices such as FM systems, neck loops, and magnifying equipment were available in the Disaster Recovery Centers, and FEMA stated that signage indicated the availability of these devices and sign language interpretation services.⁷⁴⁴

In the aftermath of Harvey, even when individuals with disabilities could access shelters, that did not necessarily mean they could access accommodations. For instance, at a DHS listening session, one survivor shared:

“Deaf people were walking in a sea of 5,000 people [at the G.R. Brown Center shelter in Houston]. They can’t hear the announcements. They have no access to information and no direction. I walked around for three hours with a sign that said ‘DEAF’ on it looking for deaf people.” There was no other obvious way to connect deaf survivors with sign language interpreters and other communication accommodations.⁷⁴⁵

⁷³⁹ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 49-50.

⁷⁴⁰ *Texas SAC Advisory Memo*, at 13.

⁷⁴¹ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 49-50.

⁷⁴² Houston Recap, at 6.

⁷⁴³ Ibid.

⁷⁴⁴ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 50.

⁷⁴⁵ Marcie Roth, June Isaacson Kailes, and Melissa Marshall, “Getting It Wrong: An Indictment with a Blueprint for Getting It Right,” *The Partnership For Inclusive Disaster Strategies*, May 2018, p. 104 (emphasis in original), https://disasterstrategies.org/wp-content/uploads/2018/08/5-23-18_After_Action_Report_-_May_2018.pdf.

FEMA indicated that it was not aware of individuals that were not able to request aid because of a disability.⁷⁴⁶ During Harvey response efforts, FEMA used census data to generate maps of geographical areas in which persons with disabilities live to conduct registration events and conduct outreach. Through outreach to government and non-government agencies, FEMA's Disability Integration Advisors (DIAs) leveraged connections with disability-related organizations, such as Independent Living Centers and Disability Rights Centers, to identify and register persons with disabilities, including those who could not leave their homes.⁷⁴⁷ However, a disability rights attorney provided a public comment to the Commission indicating that the peak number of DIAs deployed in hurricane response in 2017 ranged from 44-63, whereas in 2018 they ranged from 8-11, reflecting an 83 percent decrease in DIAs deployed when there was only a 30 percent decrease in total federal disaster workforce.⁷⁴⁸

The Commission also received comments from stakeholders regarding the complicated application process for disaster survivors that can impact individuals' abilities to receive aid. Kathy Payton, President and CEO of the Fifth Ward Community Redevelopment Corporation in Houston, testified to her clients' frustrations with the existing application process. She stated:

Our [Fifth Ward Community Redevelopment Corporation] recovery efforts are extensions of work that we were chartered to do ([a] 32-year history serving vulnerable communities) and commenced immediately following the storm as we began to receive and distribute donated supplies and materials. This is critically important as government funds and access to such in communities like Fifth Ward is almost insulting – “a day late and a dollar short.” It almost appears that the system is designed to further beset and defeat those who need the resources and help the most. The system and process are cumbersome, restrictive, inadequate in most cases, and inequitable. Responses from beneficiaries suggest that those with less get less, and those with more, get more. The reality is that those with less actually need more.

In areas, like Houston's Fifth Ward, the process of applying for assistance was cumbersome and the return was disappointing at best. Citizens are frustrated by a process largely centered around technology and access, without regard to the limited access of those living in poverty and those lacking tech savvy, particular seniors and those who are disabled. To reduce the burden and deficits presented by

⁷⁴⁶ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 52-53.

⁷⁴⁷ *Ibid.*, at 53.

⁷⁴⁸ Stephanie Duke, Public Comment, Nov. 22, 2021 [on file].

an inequitable process, we avail technology kiosks and counselors to assist individuals and families in applying.⁷⁴⁹

Brittanny Perrigue Gomez of Texas RioGrande Legal Aid outlined accessibility issues faced by Harvey survivors, more than half of whom applying for legal assistance were older adults, and nearly one-third of whom identified as having a disability.⁷⁵⁰ Many of its clients struggled with technology, internet access, and lived in rural areas with no public transportation.⁷⁵¹ Perrigue Gomez described one survivor who would need to drive a one hour round trip to access a Disaster Recovery Center. Those in such rural areas often ended up “relying on others to drive them, driving a vehicle that was unreliable due to disaster caused damage, or without access to FEMA and other disaster agencies at all.”⁷⁵² Similarly, Ben Hirsch, co-director of the West Street Recovery in Texas, a disaster recovery nonprofit that helped individuals appeal denials following Harvey, indicated that they witnessed “countless families denied due to clerical errors” and that “[s]implifying applications would eliminate many of these denials.”⁷⁵³

As discussed above, individuals of low socioeconomic status are more likely to live in housing vulnerable to disasters, and may live in areas where risks from disasters are higher.⁷⁵⁴ In her written testimony to the Commission, Veronica Chapa Gorczynski, President of the East End District, also explained that while the flooding receded quickly in many neighborhoods and homes were able to be fixed, others such as the smaller, majority- Latinx neighborhoods that are closer to the bayous, homes were “clearly devastated.”⁷⁵⁵

Wet mattresses, carpet, and broken furniture discarded in the yard to the sidewalk. Old, blue tarps placed on roofs might have been there from a previous rain event. The homes that gave me the most worry had makeshift wheelchair ramps and a lot of items piled high on the porch. This meant disabled or senior residents were left to find their own solutions.⁷⁵⁶

⁷⁴⁹ Kathy Flanagan Payton, President and CEO, Fifth Ward Community Redevelopment Corporation, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas Briefing before the U.S. Comm’n on Civil Rights, Oct. 21, 2021, at 2-3 (herein Payton Statement).

⁷⁵⁰ Perrigue Gomez Statement, at 3.

⁷⁵¹ Ibid.

⁷⁵² Ibid.

⁷⁵³ Hirsch Statement, at 2.

⁷⁵⁴ See, *supra* notes 547-549; Hallegatte, S., Vogt-Schilb, A., Rozenberg, J. et al. “From Poverty to Disaster and Back: A Review of the Literature,” *Economics of Disasters and Climate Change*, 4(223–247), Apr. 2020, <https://link.springer.com/article/10.1007/s41885-020-00060-5>; Substance Abuse and Mental Health Services Administration, *Greater Impact: How Disasters Affect People of Low Socioeconomic Status*, Jul. 2017, https://www.samhsa.gov/sites/default/files/dtac/srb-low-ses_2.pdf.

⁷⁵⁵ Veronica Chapa Gorczynski, President, East End District, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas Briefing before the U.S. Comm’n on Civil Rights, Oct. 21, 2021, at 2 (herein Gorczynski Statement).

⁷⁵⁶ Ibid, at 2.

In Texas, the supply chain disruption of Harvey led to low-income neighborhoods seeing a decrease in access to fresh meat or produce. Gorczynski told the Commission that in 2019 an annual survey published by the Kinder Institute revealed that nearly four in ten Houstonians could not afford a \$400 emergency expense and most Houstonians, especially low-income families, are renters.⁷⁵⁷ She explained that due to the devastation following Harvey, many low-income families suffered from lost wages, lack of food, transportation issues, and struggled to pay rent. In her written testimony, Gorczynski wrote that directly following the hurricane, there was a disruption in the supply chain which meant that low-income neighborhoods did not have access to fresh food, testifying about speaking to a grocery store manager that had driven over two hours, and “had tears in his eyes as he stated there was no fresh food in the store, the frozen food aisles were nearly empty, and he did not know when the trucks would make it through to deliver.”⁷⁵⁸ This was five days after Harvey’s landfall.⁷⁵⁹

FEMA has a “50% Rule” regarding substantial improvement and substantial damage,⁷⁶⁰ requiring that when the cost of the project exceeds 50 percent of the building’s market value, the building must be brought into compliance as if it were new construction.⁷⁶¹ The Texas SAC reported that this rule disproportionately impacts populations that do not have the means to fulfill the requirements, resulting in denial of aid.⁷⁶² In Houston, homes requiring full rebuilds are disproportionately owned by minority individuals, yet the value of a home could be used as justification for the rebuild to be denied.⁷⁶³

Some advocates assert the reason people of color and individuals with disabilities are disproportionately, geographically, and socially vulnerable to disasters and have the hardest time recovering is rooted in a long history of structural discrimination and racial segregation.⁷⁶⁴ Lower-income Americans are more likely to live in neighborhoods more susceptible to storm shocks: as seen in the aftermath of Harvey, poorer families were more concentrated in the flood-prone parts of Houston.⁷⁶⁵ “Low-income and minority families are also more likely to live closer to noxious industrial facilities and are thus more at-risk to chemical spills and toxic leaks resulting from storm damage.”⁷⁶⁶

⁷⁵⁷ Ibid.

⁷⁵⁸ Ibid.

⁷⁵⁹ Ibid.

⁷⁶⁰ 44 CFR § 59.1

⁷⁶¹ FEMA, *Answers to Questions About Substantially Improved/Substantially Damaged Buildings*, Aug. 2018, https://www.fema.gov/sites/default/files/2020-07/fema_p213_08232018.pdf; *Texas SAC Advisory Memo* at 16.

⁷⁶² *Texas SAC Advisory Memo* at 16.

⁷⁶³ Ibid.

⁷⁶⁴ Maddie Sloan, Director, Disaster Recovery and Fair Housing Project for Texas Appleseed, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Aug. 20, 2020, at 3 [on file].

⁷⁶⁵ Eleanor Krause and Richard V. Reeves, “Hurricanes hit the poor the hardest,” *Brookings*, Sept. 18, 2017, <https://www.brookings.edu/blog/social-mobility-memos/2017/09/18/hurricanes-hit-the-poor-the-hardest/>.

⁷⁶⁶ Ibid.

At the Commission's Texas State Advisory Committee meeting Maddie Sloan, Director of the Disaster Recovery and Fair Housing Project at Texas Appleseed, explained that:

Port Arthur, for example, was the front-line community that includes the largest refinery in North America. The neighborhoods by the Houston ship channel, which deal with a lot of hazardous chemicals, are largely Latinx. If you look at where hazardous environmental uses are in Houston, despite the fact that Houston technically has no zoning, they are all in communities of color.

Segregation made it easy for governments to disinvest, and to leave these communities with substandard protective infrastructure. What is there is often aged and has not been repaired. An example is the city of Houston. Eighty-eight percent of Houston's open-ditch drainage is in the majority-minority census block group, and 43 percent of that drainage is blocked. These communities often flood when it rains, let alone when it rains as much as it did with Hurricane Harvey.⁷⁶⁷

The Texas SAC found that minority households in Texas disproportionately reside in areas with underdeveloped infrastructure that suffered the worst effects.⁷⁶⁸ The Texas SAC wrote in its advisory memorandum to the Commission:

Black and Hispanic residents in Harris County outside the flood zone were flooded at disproportionately higher rates during Hurricane Harvey than White residents. This was particularly true in the City of Houston, where these groups, as well as immigrants, traditionally live on low lying land because of historic segregation and discriminatory housing policies, with neighborhoods that experienced decades of disinvestment, such as poor storm water infrastructure.⁷⁶⁹

Tom McCasland, Director for Houston's Housing and Community Development Department, testified before the Texas Advisory Committee to the Commission that there are "few winners and many losers" in disaster assistance requests.⁷⁷⁰ He stated that the lack of funding for some programs presents a challenge to the disaster assistance process and low-income minorities are disproportionately impacted by CDBG-DR program requirements. McCasland further explained that there seems to be a public misunderstanding regarding how FEMA allocates short-term

⁷⁶⁷ Maddie Sloan, Director, Disaster Recovery and Fair Housing Project for Texas Appleseed, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Aug. 20, 2020, at 3 [on file].

⁷⁶⁸ *Texas SAC Advisory Memo*, at 8-9.

⁷⁶⁹ *Ibid*, at 9 (internal citations omitted).

⁷⁷⁰ Tom McCasland, Director, Houston's Housing and Community Development Department, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Nov. 10, 2020, at 2 [on file].

funds and disbursements compared to HUD funding for long-term recovery.⁷⁷¹ He indicated that bureaucratic procedures have gotten in the way of ensuring equitable disaster assistance. He testified that

program requirements for low-income people seeking assistance has become its own cottage industry where multiple levels of government, all afraid of a future HUD inspector general audit creates more and more rules to protect their agency while causing significant delay[s] and sometimes insurmountable hurdles for the low income and in Houston, often racially minority families, [who] these programs are intended to serve.⁷⁷²

Additionally, McCasland explained that while policies can be facially neutral, in practice they can have a disparate impact on people who are poor, low-income, or elderly. For instance, HUD and FEMA both have regulations that do not allow either agency to duplicate benefits or assistance.⁷⁷³ This policy, while not discriminatory in practice can lead to some not receiving the assistance they are entitled to; thus, resulting in “facially neutral systemic discrimination” against many low-income families and racial minority homeowners. McCasland gave the following fictional example to illustrate a common situation:

Mrs. Jones is a widow and owns a home that has suffered through multiple hurricanes in Houston with increasing damage and deferred maintenance, until flooding from Harvey made her home uninhabitable because much of the deferred maintenance preceded Harvey, FEMA only paid her \$2,500 for damage from Harvey. Mrs. Jones used \$500 to get the home, patched the worst holes, but the remaining portion of her FEMA funds was used to cover other expenses in the 1.5 years it took for the federal CDBG-DR funding to get to the City of Houston. When she applies to the city, the duplication of benefits analysis shows a \$2,000 gap, which the homeowner must pay before her assistance can move forward. The city would willingly close this gap from its own funds, except that it is prevented from doing so by federal regulations thus Mrs. Jones is prevented from receiving \$180,000 [for a] new home that she would otherwise qualify for because she is incapable of closing this \$2,000 gap.

Seniors, mostly minority are often the families caught on the wrong side of this policy in the City of Houston, and it has been a significant barrier for providing assistance to these families. This policy, along with general barriers encountered by the lowest income homeowners, account for why so many of the neediest residents are left behind after disaster money has been spent.⁷⁷⁴

⁷⁷¹ Ibid, at 2.

⁷⁷² Ibid, at 3.

⁷⁷³ Stafford Act § 312, 42 U.S.C. § 5155.

⁷⁷⁴ Tom McCasland, Director, Houston’s Housing and Community Development Department, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Nov. 10, 2020, at 2 [on file].

McCasland stated that without changes to policies, “we will continue to see recovery efforts that result in low-income neighborhoods with more tattered blue tarps, than new roofs as the final legacy of federally-funded disaster recovery programs.”⁷⁷⁵ Similarly, Co-Director of West Street Recovery Ben Hirsch wrote to the Commission that his organization has worked with

dozens of Black and Brown families who have been denied due to deferred maintenance. In effect, this is punishing families for being too poor. And because race is such a strong predictor of economic outcomes in the United States, it also means disaster survivors are penalized for being BIPOC [Black, Indigenous, People of Color].⁷⁷⁶

Hirsch stated that to help eliminate this barrier for survivors, FEMA should assist families to repair their homes to a condition that is “safe and dignified instead of to pre-storm conditions.”⁷⁷⁷

A survey conducted one year after Harvey found that half of the immigrants with legal status impacted by the storm were more likely than native born residents to indicate that they were not receiving the help they needed.⁷⁷⁸ Additionally, foreign-born survivors may be less inclined to apply for needed assistance. The Texas SAC reported that FEMA applications state that information may be shared with other agencies, including U.S. Immigration and Customs Enforcement (ICE).⁷⁷⁹ Thus, because FEMA applications require information on every member of a household, many mixed-status homes with eligible residents do not apply for fear of identifying undocumented household members.⁷⁸⁰ ICE and U.S. Customs and Border Protection (CBP) did release a statement following Harvey, however, announcing that routine non-criminal immigration enforcement operations would not be conducted at evacuation sites, or centers such as shelters or food banks.⁷⁸¹

Stephen Billings and colleagues examined the effects of flooding and credit consequences following Harvey and found that per dollar of damage, 53.5 percent less in SBA loan dollars

⁷⁷⁵ Ibid, at 4.

⁷⁷⁶ Hirsch Statement, at 2.

⁷⁷⁷ Ibid.

⁷⁷⁸ Liz Hamel, Bryan Wu, Mollyann Brodie, Shao-Chee Sim, Elena Marks, “One Year After the Storm: Texas Gulf Coast Residents’ Views and Experiences with Hurricane Harvey Recovery,” *Kaiser Family Foundation/Episcopal Health Foundation*, Aug. 2018, p. 30, <https://files.kff.org/attachment/Report-One-Year-After-the-Storm-Texas-Gulf-Coast-Residents-Views-and-Experiences-with-Hurricane-Harvey-Recovery>.

⁷⁷⁹ *Texas SAC Advisory Memo* at 18.

⁷⁸⁰ Ibid.

⁷⁸¹ U.S. Dep’t of Homeland Security, “CBP and ICE Statement Regarding Hurricane Harvey,” Aug. 25, 2017, <https://www.dhs.gov/news/2017/08/25/cbp-and-ice-statement-regarding-hurricane-harvey>; *see also*, U.S. Dep’t of Homeland Security, Secretary Alejandro N. Mayorkas, “Guidance for Enforcement Actions in or Near Protected Areas,” Oct. 27, 2021, https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf.

went to neighborhoods that had a more limited ability to repay (and hence qualify for) an SBA loan.⁷⁸² Moreover, the researchers found, after controlling for other factors (e.g., homeowners possessing flood insurance, amount of flood damage), applicants with flood damage were almost 60 percent less likely to be approved for an SBA loan if they resided on blocks where residents were deemed less likely to be able to repay the loan.⁷⁸³ The researchers also note that FEMA assistance did not counteract these funding disparities for homeowners. They found that:

In low ability-to-repay blocks, homeowners with confirmed damage have a 1.5%-3.5% lower probability of receiving a FEMA IHP grant and, conditional on receiving a FEMA grant, they receive \$1,363 less in aid, which is about 14% of the average dollar amount of assistance to homeowners (\$9,425).⁷⁸⁴

Jie Wu, Director of Research Operations for the Kinder Institute for Urban Research, testified to the Texas Advisory Committee that generally about 50 percent of applicants were approved for SBA loans, and the majority of the denials were due to low credit scores. She explained that due to longstanding structural inequities, “communities of color typically have low credit scores, or even no credit history, so that creates a real inequality in itself.”⁷⁸⁵ Further, an analysis conducted by Texas Housers regarding denial rates of IHP applicants found that low-income households were disproportionately denied: while the denial rate for all homeowner applicants was 26 percent, for those making less than \$15,000 per year, it was 46 percent.⁷⁸⁶

Figure 6 below provides the percentage of Public Assistance obligated, broken out across affected Texas counties. Most counties saw at least 75 percent of PA categories obligated, with the exception of Nueces, City of Houston, San Jacinto, and Jefferson.⁷⁸⁷ These counties have higher rates of poverty than neighboring counties that received higher levels of support. For example, Houston has a poverty rate of 19.6 percent⁷⁸⁸ and was the recipient of 64.7 percent of PA categories, compared to neighboring Chambers County, which received 93.5 percent and has a poverty rate of 9.3 percent.⁷⁸⁹ Jefferson County, which includes Port Arthur, whose

⁷⁸² Billings et al., “Let the Rich Be Flooded: The Distribution of Financial Aid and Distress after Hurricane Harvey,” at 26.

⁷⁸³ Ibid.

⁷⁸⁴ Ibid, at 3-4.

⁷⁸⁵ Jie Wu, Director of Research Operations, Kinder Institute for Urban Research, *Texas Advisory Committee to the U.S. Commission on Civil Rights* Conference Call, Dec. 1, 2020, at 21-22 [on file].

⁷⁸⁶ Amelia Adams, “Low-Income Households Disproportionately Denied by FEMA is a Sign of a System that is Failing the Most Vulnerable,” *Texas Housers*, Nov. 30, 2018, <https://texashousers.org/2018/11/30/low-income-households-disproportionately-denied-by-fema-is-a-sign-of-a-system-that-is-failing-the-most-vulnerable/>; Orduña Statement, at 1.

⁷⁸⁷ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, Supplemental at p. 140 [on file].

⁷⁸⁸ U.S. Census Bureau, “Houston city, Texas,” *QuickFacts*, <https://www.census.gov/quickfacts/fact/table/houstoncitytexas/PST040219> (accessed Apr. 28, 2022).

⁷⁸⁹ U.S. Census Bureau, “Chambers County, Texas,” *QuickFacts*, <https://www.census.gov/quickfacts/chamberscountytexas> (accessed Apr. 28, 2022).

Independent School District has a student body that is 65-75 percent economically disadvantaged,⁷⁹⁰ has an 18.3 percent poverty rate and received 67.5 percent.⁷⁹¹ San Jacinto County has a 16.1 percent poverty rate⁷⁹² and received 71.1 percent. Nueces County received less than 50 percent and has a poverty rate of 17.5 percent.⁷⁹³ These discrepancies are not uniform across PA obligations, however, for example, Kleberg County, a neighbor to Nueces, has a poverty rate of 20.8 percent⁷⁹⁴ and received 100 percent.⁷⁹⁵

⁷⁹⁰ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 47.

⁷⁹¹ U.S. Census Bureau, “Jefferson County, Texas,” *QuickFacts*, <https://www.census.gov/quickfacts/jeffersoncountytexas> (accessed Apr. 28, 2022).

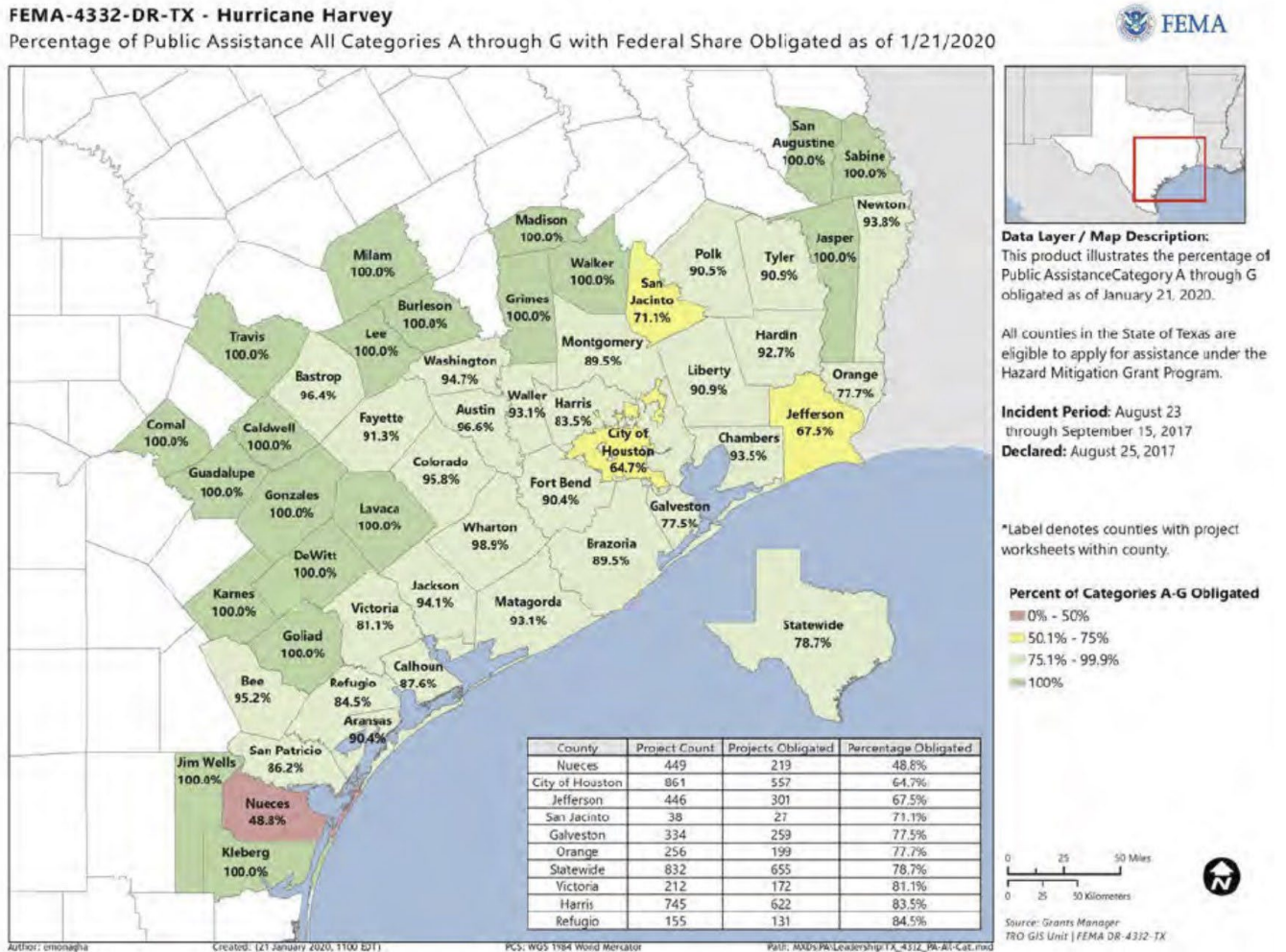
⁷⁹² U.S. Census Bureau, “San Jacinto County, Texas,” *QuickFacts*, <https://www.census.gov/quickfacts/sanjacintocountytexas> (accessed Apr. 28, 2022).

⁷⁹³ U.S. Census Bureau, “Nueces County, Texas,” *QuickFacts*, <https://www.census.gov/quickfacts/nuecescountytexas> (accessed Apr. 28, 2022).

⁷⁹⁴ U.S. Census Bureau, “Kleberg County, Texas,” *QuickFacts*, <https://www.census.gov/quickfacts/fact/table/klebergcountytexas/PST045219> (accessed Apr. 28, 2022).

⁷⁹⁵ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, Supplemental at p. 140 [on file].

Figure 6 Hurricane Harvey Public Assistance Obligated (as of Jan. 21, 2020)



Source: Federal Emergency Management Agency, FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, Supplemental at p. 140 [on file].

A 2019 lawsuit filed in a federal district court by Disaster Housing Recovery Coalition member Texas RioGrande Legal Aid and three low-income renters of color alleged that the decision by HUD and the Texas General Land Office to provide \$5 billion in Harvey recovery funding to homeowners, developers, and landlords disparately impacted Black and Latinx disaster survivors who were more likely to be renters than property owners.⁷⁹⁶ The lawsuit alleged that renters received little assistance and as a result were forced to live in cars, move out of their communities, or sleep on floors over two years following the hurricane; and data show that homeowners had far greater access to and were more likely to be eligible for disaster recovery

⁷⁹⁶ National Low Income Housing Coalition, "Lawsuit Alleges Discrimination Against Black and Latinx Renters During Hurricane Harvey Recovery," Oct. 21, 2019, <https://nlihc.org/resource/lawsuit-alleges-discrimination-against-black-and-latinx-renters-during-hurricane-harvey>.

programs compared to renters.⁷⁹⁷ A disproportionate number of these tenants were low-income Black or Hispanic Texans living in some of the most vulnerable locations at the time, in low-lying areas prone to flooding and in poorly maintained buildings.⁷⁹⁸ As of this report's publication, no resolution had been reached between the parties and a trial is pending.⁷⁹⁹ Jie Wu also testified to the Texas Advisory Committee that overall approval rates for assistance for renters after Harvey is lower than for homeowners (about 34 percent versus 46 percent, respectively).⁸⁰⁰ Wu stated that homeowners were more likely to be approved than renters for FEMA assistance in seven of the last nine disasters.⁸⁰¹

Director of the Disaster Recovery and Fair Housing Project at Texas Appleseed, Maddie Sloan, explained that:

The history of segregation discrimination created an astonishing wealth gap, particularly between Black families and White families, and there is continuing inequality that means families of color and individuals with disabilities don't have access to the resources they need to recover. In addition, affordable rental housing, particularly that affordable to the lowest income households, has largely been located in low-income neighborhoods of color, again which are often [] forced into geographically vulnerable areas and are exposed to environmental hazards.⁸⁰²

The Committee received testimony that 15 percent of White residents reported that a household member lost their job due to Harvey, compared to 33 percent of Black and Latinx households.⁸⁰³ Wage losses were more severe among nonwhite respondents and renters with an annual income below \$50,000. Seventy-one percent of Latinx respondents reported wage losses, compared to only 50 percent of White respondents.⁸⁰⁴ White and Hispanic residents who applied for FEMA or SBA assistance were more likely than Black residents who applied to say their application was approved (34 percent, 28 percent, and 13 percent, respectively).⁸⁰⁵

In the 16 counties of Texas RioGrande Legal Aid's service area, renters were more likely to be Black or Latinx, without adequate insurance coverage, and have a difficult time navigating

⁷⁹⁷ Manny Fernandez, "Two Years After Hurricane Harvey, One Group Says It Has Been Overlooked: Renters," *The New York Times*, Oct. 11, 2019, <https://www.nytimes.com/2019/10/11/us/hurricane-harvey-lawsuit-texas.html>.

⁷⁹⁸ *Ibid.*

⁷⁹⁹ *See*, Civil Docket Report, *Wharton v. Dep't of Hous. And Urban Dev.*, 2:19-cv-00300 (complaint filed Oct. 11, 2019).

⁸⁰⁰ Jie Wu, Director of Research Operations, Kinder Institute for Urban Research, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Dec. 1, 2020, at 21 [on file].

⁸⁰¹ *Ibid.*

⁸⁰² Maddie Sloan, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Aug. 20, 2020, at 3-4 [on file].

⁸⁰³ *Texas SAC Advisory Memo*, at 12.

⁸⁰⁴ *Ibid.*

⁸⁰⁵ *Sim Statement*, at 2.

FEMA and the State of Texas' disaster assistance programs.⁸⁰⁶ Ben Hirsch, Co-Director of West Street Recovery in Texas, testified that because minorities are more likely to not have regular banking accounts, the application burden falls disproportionately on marginalized individuals.⁸⁰⁷

To assess the recovery efforts and how Texas residents were affected by Harvey and their needs following the disaster, the Kaiser Family Foundation and the Episcopal Health Foundation surveyed residents of 24 counties along Texas' Gulf Coast that were heavily impacted by property damage from the storm.⁸⁰⁸ This survey was conducted roughly two to three months after Harvey made landfall in Texas and consisted of a representative sample of 1,635 participants.⁸⁰⁹ Geographically, the effects of Harvey were felt more heavily in some communities than others. Those living in counties in the Golden Triangle and those in Coastal counties were more likely to report being affected (77 percent and 74 percent, respectively) than those in more central counties such as Harris County (where Houston resides) and those surrounding it (65 percent and 63 percent, respectively).⁸¹⁰ These differences were largely due to higher rates of property damage. The study found that two-thirds of the residents surveyed reported damage to their homes or vehicles, employment disruptions, or loss of income. At the time of the survey, one in nine reported still being displaced from their home.⁸¹¹

Moreover, effects were felt more acutely among particular racial and ethnic groups and socioeconomic levels, with Black and Latinx residents and those with lower incomes more likely to report being negatively affected by Harvey.⁸¹² For Black residents, these differences were largely driven by Harvey's disruption on employment and by higher rates of damage to their homes and vehicles. For Latinx residents, this disparity was largely driven by higher rates of employment disruption effects.⁸¹³ Table 5 illustrates these reported effects.

Table 5 Percent Reporting Different Effects from Hurricane Harvey by Race and Income

Percent who reported the following:	Self-reported income <200% FPL			Self-reported income 200% FPL or higher†	
	Black	Latinx	White	Latinx	White
Home damaged	59%	48%	46%	42%	35%
Vehicle damaged	32*	25	16	20	17

⁸⁰⁶ Perrigue Gomez Statement, at 9.

⁸⁰⁷ Hirsch Statement, at 2.

⁸⁰⁸ Hamel et al., "An Early Assessment of Hurricane Harvey's Impact on Vulnerable Texans in the Gulf Coast Region."

⁸⁰⁹ Ibid, Appendix A.

⁸¹⁰ Ibid, at 5.

⁸¹¹ Ibid, at 9.

⁸¹² Ibid, at 5-6.

⁸¹³ Ibid, at 5-6.

Someone in household laid off/lost job	22	17	14	6	5
Someone in household had hours reduced at work	31*	58*	19	37*	20
Someone in household had other loss of income	37	45*	31	36*	19
NET Affected in any of above ways	74*	82*	61	71*	53

* indicates statistically significant difference from white residents in the same income category

† The researchers note that there were not enough higher-income Black residents in the sample to analyze.

Source: Liz Hamel, Bryan Wu, Mollyann Brodie, Shao-Chee Sim, and Elena Marks, “An Early Assessment of Hurricane Harvey’s Impact on Vulnerable Texans in the Gulf Coast Region,” Dec. 2017.

Regarding federal aid, at the time of the survey, more than half (52 percent) of those who had applied for assistance from FEMA or the SBA stated that their application was still pending (19 percent) or had been denied (33 percent).⁸¹⁴ Of those who had been denied, 38 percent said they were not told the reason for their denials, and 59 percent said they were not given information on how to resubmit their applications.⁸¹⁵ Moreover, nearly half of affected residents reported they were not receiving the help they needed to recover from Harvey.⁸¹⁶ In particular, residents stated that they needed more assistance in applying for disaster aid, and repairing damage to their homes.⁸¹⁷ Brittany Perrigue Gomez of Texas RioGrande Legal Aid described a FEMA standard denial letter, IID-HA: “Home Safe to Occupy” which indicates that the damage caused by the disaster did not make the home unsafe to live in.⁸¹⁸ The letter does not include facts about what the inspector viewed or deemed to be disaster-related damage, leaving applicants unsure as to what made them ineligible.⁸¹⁹

Chuck Wemple, Executive Director for the Houston-Galveston Area Council of Governments, raised additional concerns regarding how FEMA assesses the severity of the damage to a property. FEMA utilizes a severity formula under the agency’s “reallocation method” through which a property is deemed either “damaged” or “destroyed.” Wemple explained to the Commission’s Texas Advisory Committee that residents’ “[n]eed does not equal eligibility for the funding” under this schema.⁸²⁰ For instance, for some homeowners, these assessments may

⁸¹⁴ Ibid, at 10.

⁸¹⁵ Ibid, at 11.

⁸¹⁶ Ibid, at 10.

⁸¹⁷ Ibid, at 13.

⁸¹⁸ Perrigue Gomez Statement, at 6.

⁸¹⁹ Ibid.

⁸²⁰ Chuck Wemple, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Nov. 10, 2020, at 22 [on file].

not accurately assess the total damage to their homes which further delays the recovery process. Wemple explains what was originally assessed as a “simple repair,” a year later turns into a tear down.⁸²¹

Additionally, 30 percent of Texas households are categorized by the United Way as ALICE: Asset Limited, Income Constrained, and Employed, these individuals are above the federal poverty level but still challenged in making ends meet, and in Harris County, the ALICE percentage increases to 48 percent.⁸²² Francisco Sánchez, Jr., President of the Emergency Management Association of Texas, explained that with most aid limited to insurance or loan programs, ALICE households can easily slide into poverty due to the impacts of even minor disasters.⁸²³

Brittany Perrigue Gomez also explained to the Commission that in Texas, disaster recovery is further complicated by the bifurcation of FEMA administering the Housing Assistance Program and the State of Texas administering the Other Needs Assistance Program (ONA) through the Texas Health and Human Services (HHSC).⁸²⁴ Gomez asserted that disaster survivors, however, are rarely aware of these differences. She explained that survivors often believed that the ONA program was managed by FEMA – and not the State of Texas – therefore, when FEMA employees told survivors that they did not provide assistance for ONA, many survivors believed that assistance for ONA was not available.⁸²⁵ This is significant for several reasons. First, this misunderstanding can result in survivors not receiving funds for which they may qualify. Second, with the ONA program being administered by Texas means that survivors, if they are denied assistance, have additional levels of appeal and access to request a Fair Hearing.

Gomez explained that a Fair Hearing appeal

puts the burden back on the State to prove they have complied with their policies and procedures. In our experience, HHSC had difficulty proving compliance with policies and procedures because the policies and procedures were written by FEMA. Additionally, HHSC was tasked with proving that FEMA inspectors complied with FEMA policies and procedures – which they often could not do.

Requesting a Fair Hearing is arduous and traumatizing for a disaster survivor, but if FEMA employees and inspectors were properly trained and more effective quality control measures were implemented, Fair Hearings would be the exception, not the standard ... I am more likely to provide a client advice on how to represent themselves in

⁸²¹ Ibid, at 25.

⁸²² Sánchez Statement, at 2.

⁸²³ Ibid.

⁸²⁴ Perrigue Gomez Statement, at 7.

⁸²⁵ Ibid.

small claims court than I am the context of an ONA Fair Hearing because the odds are not in their favor.⁸²⁶

Addressing accessibility issues for disaster survivors, more than half of the 2,900 Harvey survivors who applied for legal assistance with Texas RioGrande Legal Aid from August 2017 to July 2019 were older adults. Nearly one-third identified as having a disability, and all of them lived on fixed incomes.⁸²⁷ Their legal issues included family, housing, consumer, employment law matters, FEMA and SBA applications and appeals, and title clearing for the Texas General Land Office's Homeowner's Assistance Program (HAP).⁸²⁸ Gomez explained to the Commission that many disaster survivors are not knowledgeable about the processes and steps that are necessary to apply for federal aid following an emergency disaster. As such, Texas RioGrande Legal Aid provides a timeline guide of disaster survivors' legal needs following an emergency disaster to illustrate the complex process (see Figure 7).

⁸²⁶ Ibid.

⁸²⁷ Ibid, at 3

⁸²⁸ Ibid.

Figure 7 Legal Needs After a Disaster



Source: Lone Star Legal Aid and Texas RioGrande Legal Aid

Another issue that survivors in Texas faced was language barriers. Despite over one hundred languages being spoken in Houston, following Harvey's landfall, real-time information was rarely available in languages other than English and Spanish. Three in ten residents surveyed indicated that it was very or somewhat difficult to find information about recovery assistance in Spanish.⁸²⁹ Houston government employees have access to a real-time translation line, but many were not aware they had access to this service.⁸³⁰ FEMA indicated to the Commission that applicants with limited English proficiency (LEP) are provided with:

- Disaster information and multi-lingual signage in languages identified through demographic analysis of the impacted area;
- Translation and interpretation services (provided by qualified translators and interpreters) available in 250 languages to assist non-English-speaking disaster survivors;

⁸²⁹ *Texas SAC Advisory Memo*, at 13.

⁸³⁰ *Ibid.*

- Staff to identify language needs and connect disaster survivors to applicable translation services by qualified translators;
- Appropriate referrals for applicants with disabilities and others with access and functional needs who also have LEP; and,
- Spanish language instructions through: <https://www.disasterassistance.gov/es>, where individuals can register for assistance.⁸³¹

The Commission heard testimony during the Texas briefing regarding language barriers. Brittany Perrigue Gomez testified that Texas RioGrande Legal Aid has

experienced cases where [the initial] eligibility determination letters from FEMA, that first round that go out, do typically come in the appropriate language...But when an appeal is submitted, specifically regarding other needs assistance, so that division that's administered by the State of Texas, we have seen unfortunate incidents where the form language of the letter is in Spanish, for example, but the actual denial reason is written in English. That's hugely problematic and really inexcusable for a state where one of the [] most populous languages is Spanish.⁸³²

Chrishelle Palay, Coalition Director for the H.O.M.E. Coalition, testified before the Commission's Texas State Advisory Committee that language access was a serious issue for some survivors after Harvey. She stated that many of the informational fliers announcing the locations of shelters were only in English and so this information did not reach many communities with limited English proficiency.⁸³³

Additional Issues in the Federal Response to Hurricane Harvey

Within 60 days of Harvey's landfall, FEMA expanded incident management staff from 2,800 to 10,400 deployed staff and supplemented Agency staff with 3,000 additional staff from DHS' Surge Capacity Force (SCF).⁸³⁴

At the local level, state emergency managers collaborate with other state and local level organizations.⁸³⁵ According to FEMA, the agency handled challenges regarding the capabilities of the State of Texas, its municipalities' and organizations' responses to Harvey related to authorizing, arranging, organizing, prioritizing the delivery of aid, and the distribution of aid

⁸³¹ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 35.

⁸³² Perrigue Gomez Testimony, *Texas Briefing*, pp. 48-49.

⁸³³ Chrishelle Palay, Coalition Director, Houston Organizing Movement for Equity Coalition, Briefing Testimony before the Texas State Advisory Committee to the U.S. Commission on Civil Rights, Aug. 20, 2020, at 15.

⁸³⁴ Joint FEMA Statement, at 11.

⁸³⁵ FEMA, "Building an Effective Emergency Management Organization"

<https://training.fema.gov/hiedu/docs/fem/chapter%203%20-%20building%20an%20effective%20em%20org.doc>.

once the aid was delivered to state and local governments by FEMA.⁸³⁶ Francisco Sánchez, Jr., President of the Emergency Management Association of Texas, explained to the Commission that the

chain of aid from the federal government to local authorities/residents is understandable in the context of federalism. Having said that, setting up the Joint Field Office 200 miles away from the disaster limits the ability for federal partners to understand the needs at Ground Zero. Barriers to communication and understanding need to be eliminated whenever possible.⁸³⁷

Texas developed deliberate emergency hurricane response strategies prior to the start of the 2017 season.⁸³⁸ The state implemented several preparedness activities intended to prepare the state for a hurricane strike along the Gulf Coast. According to FEMA, these preparedness efforts helped to decrease the loss of life as Harvey made landfall on the Texas coast.⁸³⁹ FEMA and the Texas Department of Emergency Management (TDEM) developed and implemented a schedule to facilitate faster recovery for jurisdictions due to the unusual burden placed on state resources required after Harvey.⁸⁴⁰ FEMA recognized that extreme emergency circumstances existed for all counties that were included in the Presidential declaration based on TDEM's determination and that 244 affected jurisdictions were operating under extreme needs as designated by the Governor's proclamation.⁸⁴¹ FEMA granted an Exigent and Emergency Conditions Extension through November 10, 2017, for contracts supporting debris removal, housing, and emergency protective services. During this period, subrecipients could proceed with existing non-competitively procured contracts to save lives, ensure public health and safety, or improve properties that had sustained damage in the storm.⁸⁴²

Working with state and local officials to ensure the equitable distribution of aid emerged as another area where the federal government can improve to ensure equitable distribution of disaster relief. Robert Grimm, Jefferson County Emergency Management Coordinator testified that after Hurricane Rita in 2005 and Hurricane Ike in 2008, "money flowed from federal, then to state, then to local governments."⁸⁴³ This suggests that there were significant policy or legislative changes enacted by either the State of Texas and/or federal disaster agencies that affected the distribution of aid funds. Prior to Harvey, federal funds went to and were distributed through

⁸³⁶ FEMA Response to USCCR Interrogatories, p. 26 [on file].

⁸³⁷ Sánchez Statement, at 4.

⁸³⁸ FEMA Response to USCCR Interrogatories, p. 26 [on file].

⁸³⁹ *Ibid.*

⁸⁴⁰ *Ibid.*, at 27.

⁸⁴¹ *Ibid.*

⁸⁴² *Ibid.*

⁸⁴³ Robert Grimm, Jefferson County Emergency Management Coordinator, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Nov. 10, 2020, at 5 [on file].

TDEM. Grimm explained that after Harvey, the City of Houston and Harris County had separate funding going directly to them, but that in southeast Texas, federal money went to the General Land Office (GLO) to decide how to allocate the funding.⁸⁴⁴ As a result, local officials felt they “didn’t have much of a pull...where that money would be funneled into.”⁸⁴⁵

A DHS OIG audit of FEMA’s Intergovernmental Service Agreement (IGSA) with the Texas GLO⁸⁴⁶ found that FEMA initiated the Agreement without first developing the processes and controls the state needed to effectively administer the program.⁸⁴⁷ Specifically, the audit concluded that FEMA did not have guidelines, such as process maps and standard operating procedures, or identify specific roles and responsibilities the GLO would need to carry out the program. FEMA did not have guidance and training to build state capabilities to administer the disaster housing assistance.⁸⁴⁸ Additionally, FEMA’s housing information system did not support all housing options due to the system not being designed to address various housing options.⁸⁴⁹

In March 2021, the Texas Advisory Committee reported to the Commission that the Community Development Block Grant Disaster Recovery (CDBG-DR) and Community Development Block Grant Mitigation (CDBG-MIT) funds were not provided to grantees under a consistent codified program that categorizes and lists community development block grants-disaster recovery program and community development block grants-mitigation program in the Code of Federal Regulations like other CDBG awards.⁸⁵⁰ Currently, disaster allocations must develop new regulations before funds are available for states to use.⁸⁵¹ One benefit of standardizing codes is that it simplifies the complex funding process, and as a result, can speed up the disbursement of funds.⁸⁵² The Texas GLO contends that the “codification of the CDBG-DR program is critical to improving and streamlining positive outcomes in long-term disaster recovery.”⁸⁵³

Since disaster funds are limited and dispersed until funds are depleted, understanding the funding process is essential to receiving aid; and unfamiliarity with the funding process can hinder disaster survivors’ accessibility to these funds, who are oftentimes survivors with the most unmet needs. As a result, the ambiguities regarding how to apply for funds cause inequitable fund

⁸⁴⁴ Ibid.

⁸⁴⁵ Ibid.

⁸⁴⁶ See, *supra* notes 675-677.

⁸⁴⁷ DHS OIG, *FEMA Initiated the Hurricane Harvey Direct Housing Assistance Agreement without Necessary Processes and Controls*, Jul. 6, 2021, p. 2, <https://www.oig.dhs.gov/sites/default/files/assets/2021-07/OIG-21-42-Jul21.pdf>

⁸⁴⁸ Ibid.

⁸⁴⁹ Ibid.

⁸⁵⁰ *Texas SAC Advisory Memo*, at 18-19.

⁸⁵¹ Texas General Land Office (GLO), Written Statement to the *Texas Advisory Committee to the U.S. Commission on Civil Rights*, Jan. 15, 2021, at 1 [on file].

⁸⁵² Begg Statement, at 2-3.

⁸⁵³ Texas General Land Office (GLO), Written Statement, *Texas SAC Advisory Memo*, at 1 [on file].

distribution outcomes for some, compared to other disaster survivors who have more access, resources, and knowledge regarding the application and funding process.⁸⁵⁴

Ongoing Rebuilding Efforts

Rebuilding in many parts of Texas following Hurricane Harvey was slow moving.⁸⁵⁵ The HUD OIG performed an audit of the Harris County Hurricane Harvey CDBG-DR program in order to assess efficiency and effectiveness, and whether the program was assisting disaster participants in a timely manner; specifically, to examine the status of its HUD-approved activities and challenges, if any, in implementing the activities. The audit found that Harris County had not efficiently or effectively operated its Hurricane Harvey CDBG-DR program. Specifically, three years after Harvey, Harris County had assisted only 112 of 4,513 planned program participants and had spent less than 1 percent of its grant funds.⁸⁵⁶

In April 2020, the Texas GLO Commissioner George P. Bush sent a letter to Houston Mayor Sylvester Turner issuing a notice of intent to eliminate funding and end city oversight of Harvey recovery aid.⁸⁵⁷ GLO announced it would be taking over control of some of Houston's aid amid slow progress, saying the city hindered the recovery for thousands of 2017 flood victims still waiting for relief years after Harvey. Over the summer of that year, Houston filed a temporary restraining order and temporary and permanent injunctions to prevent the state agency from "illegally taking control of \$1.27 billion in disaster relief funds" for Harvey storm victims. The temporary restraining order was denied, but the temporary injunction was granted. In August, the Texas Supreme Court granted GLO's temporary relief to move forward with taking over the program,⁸⁵⁸ despite the city's ongoing lawsuit.⁸⁵⁹ In October 2020, HUD approved GLO's plan to take over part of Houston's housing programs, granting control over the funding that had

⁸⁵⁴ Rebecca Hersher and Robert Benincasa, "How Federal Disaster Money Favors The Rich," *NPR*, Mar. 5, 2019, <https://www.npr.org/2019/03/05/688786177/how-federal-disaster-money-favors-the-rich>.

⁸⁵⁵ Juan A. Lozano, "3 years after Harvey, some in Houston still waiting for help," *ABC News*, Aug. 24, 2020, <https://abcnews.go.com/US/wireStory/years-harvey-houston-waiting-72562555>; Jason Miles, "'Packed their stuff and left' | Hurricane Harvey's impact still evident in many areas nearly four years after flood," *KHOU*, Aug. 2, 2021, <https://www.khou.com/article/weather/hurricane/harvey/hurricane-harvey-impact-lingers-four-years-after-flood/285-afa36c54-f48e-4566-b626-8ce9c9776fef>.

⁸⁵⁶ HUD OIG, *Harris County Community Services Department, Houston, TX, Was Inefficient and Ineffective in Operating Its Hurricane Harvey Program*, Jun. 2, 2021, <https://www.hudoig.gov/reports-publications/report/harris-county-community-services-department-houston-tx-was-inefficient>.

⁸⁵⁷ George P. Bush, Commissioner, Texas General Land Office, *Letter to Houston Mayor Sylvester Turner*, Apr. 22, 2020, <https://recovery.texas.gov/files/programs/hap-houston/1-glo-letter-to-city.pdf>; see also Ted Oberg and Sarah Rafique, "Houston's Harvey recovery program now in state hands," *ABC13*, Oct. 7, 2020, <https://abc13.com/hurricane-harvey-recovery-program-taken-over-by-texas-general-land-office-repair-on-houston-storm-damaged-homes-supreme-court-us-department-of-housing-and-urban-development/6817190/>.

⁸⁵⁸ Texas General Land Office, "GLO Reopens Applications for Homeowner Assistance Program for City of Houston," Sept. 11, 2020, <https://www.glo.texas.gov/the-glo/news/press-releases/2020/september/glo-reopens-applications-for-homeowner-assistance-program-for-city-of-houston.html>.

⁸⁵⁹ Oberg and Rafique, "Houston's Harvey recovery program now in state hands."

previously been available to the city of Houston for its Hurricane Harvey recovery programs.⁸⁶⁰ The Commission received a public comment from a Houston resident indicating that the city promised it would start working on her home in 2018, and as of November 10, 2021, it still had not happened.⁸⁶¹

According to written testimony submitted to the Texas Advisory Committee to the Commission, GLO's Hurricane Harvey Homeowner Assistance Program (HAP) was established to reach survivors who were the hardest hit by the storm and specifically, low- and moderate-income, at-risk, and historically marginalized families and individuals. This state-run program is GLO's largest Harvey-related CDBG-DR with over \$1.3 billion allocated to the program and serves homeowners in the 48 impacted counties outside of Harris County and the city of Houston.⁸⁶² As of December 2020, more than 4,100 HAP applicants had been approved for construction and over half of these homes were already under construction or completed. Breaking these applicants down by demographics, more than 80 percent of the funds have benefitted low- and moderate-income individuals and families. Of these, 47 percent of the approved HAP applicants have extremely low household income (0 to 30 percent of the area's median income), and another 16 percent have very low household income (30 to 50 percent of the area's median income). Of the approved applicants, 34 percent are Black residents, 35 percent are Latinx residents, 24 percent are White residents, and 7 percent were listed as "Other" or their race/ethnicity was unreported.⁸⁶³ However, the demographic makeup of approved applicants varies across impacted regions. For example, in the Southeast Texas Regional Planning Commission (SETRPC) area, which includes the cities of Beaumont, Port Arthur, and Orange, of the approved HAP applicants, 53 percent are Black residents, while the Coastal Bend Councils of Governments' (COG) region, the area where Harvey initially made landfall, 71 percent of the approved HAP applicants are Latinx.⁸⁶⁴

In May 2021, GLO announced that cities and communities in 40 counties impacted by Harvey would receive about \$1 billion in funding, awarded by HUD, for flood mitigation projects, and Houston officials expressed anger and disbelief at the small portion they were receiving.⁸⁶⁵ Ninety million dollars was given to four cities in Harris County, yet the \$1 billion in proposals

⁸⁶⁰ Holly Hansen, "HUD Approves State Takeover of Houston's Hurricane Harvey Recovery Funds," *The Texan*, Oct. 9, 2020, <https://thetexan.news/hud-approves-state-takeover-of-houstons-hurricane-harvey-recovery-funds/>.

⁸⁶¹ Readie Hayword Elmore, Public Comment, Nov. 10, 2021 [on file].

⁸⁶² Texas General Land Office (GLO), Written Statement, *Texas SAC Advisory Memo*.

⁸⁶³ *Ibid.*

⁸⁶⁴ Texas General Land Office, Written Statement to Texas State Advisory Committee, p. 2 [on file]. Note: there are nine regional Councils of Governments (COGs). "COG boards are comprised of elected officials from the impacted communities. These local leaders are vital to the distribution of funds process as they are experts in local recovery needs and are best suited to prioritize the limited funds available for programs such as buyouts/acquisitions and infrastructure improvements." See e.g., GLO Announces Approval of Regional Councils of Government Methods of Distribution for Local Recovery Funds, Press Release, Oct. 8, 2018, <https://www.glo.texas.gov/the-glo/news/press-releases/2018/october/glo-announces-approval-of-regional-councils-of-government-methods-of-distribution-for-local-recovery-funds.html>

⁸⁶⁵ See e.g., Juan A. Lozano, "Houston area getting little of \$1B in Harvey flood aid," *AP News*, May 21, 2021, <https://apnews.com/article/houston-hurricane-harvey-floods-28c2f1941fc6e6509b63fff909d6a69a>.

that had been submitted by the county government and the city of Houston were not approved.⁸⁶⁶ In June 2021, GLO announced plans to subaward \$750 million (in light of a denial by HUD) of a direct allocation of mitigation funding for Harris County. GLO indicated that it would be drafting an action plan that will include a set aside of CDBG-MIT funding for \$750 million and direct at least \$500 million in additional funds to be distributed through the Regional Mitigation Program.⁸⁶⁷

Hurricane María

Disaster Declaration Proceedings

In early September 2017, Hurricane Irma passed over Puerto Rico's northern coast as a Category 5 storm, causing massive disruptions to the power grid and water service.⁸⁶⁸ Two weeks later on September 20, Hurricane María made landfall on the Island, the same day, then-Governor Ricardo Rosselló Nevares requested an expedited major disaster declaration.⁸⁶⁹ President Trump signed the disaster declaration on the same day.⁸⁷⁰ María was the first Category 4 storm to make landfall in Puerto Rico in 85 years.⁸⁷¹ Directly following the storm, every air and seaport was closed, and 54 municipalities were designated as eligible for individual assistance; all municipalities and areas within Puerto Rico were deemed eligible for public assistance and hazard mitigation grants.⁸⁷² On November 2, 2017 (43 days later), FEMA amended the initial declaration to include permanent work orders under the Public Assistance program to include all municipalities on the Island.⁸⁷³ Given the magnitude of the two hurricanes in Puerto Rico, the President authorized the federal share to be 90 percent of total eligible costs (compared to 75 percent) for Hurricanes Irma and María, except for assistance that was previously approved at 100 percent.⁸⁷⁴

⁸⁶⁶ Ibid.

⁸⁶⁷ Texas General Land Office, *Harris County Receiving \$1.1 Billion in Infrastructure and Mitigation Projects*, Jun. 16, 2021, <https://www.glo.texas.gov/the-glo/news/press-releases/2021/june/harris-county-receiving-1-point-1-billion-in-infrastructure-and-mitigation-projects.html>.

⁸⁶⁸ See e.g., RAND Corporation, *Hurricanes Irma and María: Impact and Aftermath*, <https://www.rand.org/hsrd/hsoac/projects/puerto-rico-recovery/hurricanes-irma-and-maria.html>

⁸⁶⁹ FEMA, *Preliminary Damage Assessment Report: Hurricane María*, Sept. 20, 2017, https://www.fema.gov/sites/default/files/2020-03/FEMA4339DRPR_Expedited.pdf, p. 1.

⁸⁷⁰ Puerto Rico; Major Disaster and Related Determinations, 80 Fed. Reg. 46820 (Oct. 6, 2017).

⁸⁷¹ FEMA 2017 *Hurricane Season After-Action Report*, at 2.

⁸⁷² Puerto Rico; Major Disaster and Related Determinations, 80 Fed. Reg. 46829 (Oct. 6, 2017), at 46821; see also FEMA, 2017 *Hurricane Season After-Action Report*, at 2.

⁸⁷³ FEMA, *Amendment No. 4*, Nov. 2, 2017, <https://www.fema.gov/disaster-federal-register-notice/amendment-no-4-222>.

⁸⁷⁴ FEMA authorized 100 percent federal funding of emergency work from September 2017 through May 2018 for emergency protective measures and through June 2018 for debris removal. See GAO, *Puerto Rico Recovery: FEMA Made Progress in Approving Projects, But Should Identify and Assess Risks to the Recovery*, May 19, 2021, <https://www.gao.gov/products/gao-21-264>, p. 16, <https://www.gao.gov/products/gao-21-264>.

FEMA's Overall Estimated Monetary Damages and Assessment of Impacts

The declaration for Puerto Rico following María was expedited. Due to the severity of the disaster, the Regional Administrator waived the requirement for a Preliminary Damage Assessment. Therefore, there was no assessment of the estimated monetary damages.⁸⁷⁵ As discussed previously, FEMA utilizes the National Oceanic and Atmospheric Administration (NOAA) estimate of monetary damages and losses by hurricanes.⁸⁷⁶ NOAA estimated the monetary damages from María to be \$90 billion.⁸⁷⁷ Crowdsourcing efforts aided FEMA's understanding and knowledge of the extent of the damage, with over 5,400 digital volunteers collecting and analyzing images of damage around Puerto Rico.⁸⁷⁸ Volunteers collected information on hospital status, road and bridge closures, and food and fuel availability.⁸⁷⁹ Two days after María made landfall, FEMA executed an air reconnaissance mission, focusing on the northeastern and southeastern regions of Puerto Rico. It collected data and took photos of critical infrastructure elements.⁸⁸⁰ FEMA estimated that of the 3.8 million residents, 100 percent of the population was affected by the hurricane.⁸⁸¹

Timeline of Requests for Assistance, Relief & Rebuilding Aid Provided

The very first allotment of aid was disbursed on September 28, 2017, eight days after landfall that amounted to \$2,547,000 across 5,094 payments in "other needs assistance."⁸⁸² On October 11, FEMA approved more than \$44 million in IHP assistance and \$54.6 million to the Puerto Rico Electric and Power Authority (PREPA)⁸⁸³ for emergency work. These funds were in addition to the more than \$41.6 million awarded for other emergency work (public assistance) provided.⁸⁸⁴

Also in October 2017, FEMA awarded Bronze Star LLC, a Florida based company, two contracts for a total of over \$30 million for tarps and plastic sheeting.⁸⁸⁵ A little more than a month later, FEMA had to cancel both contracts due to non-delivery and restarted the process to

⁸⁷⁵ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 29.

⁸⁷⁶ FEMA 2017 Hurricane Season After-Action Report, at 1.

⁸⁷⁷ NOAA, *Hurricane María*, Feb. 14, 2019, https://www.nhc.noaa.gov/data/tcr/AL152017_Maria.pdf, p. 7.

⁸⁷⁸ FEMA 2017 Hurricane Season After-Action Report, at 34.

⁸⁷⁹ *Ibid.*

⁸⁸⁰ *Ibid.*

⁸⁸¹ *Ibid.*, at 2.

⁸⁸² FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 38.

⁸⁸³ PREPA is an autonomous agency of the Government of Puerto Rico that produces and distributes electricity to more than 1.5 million customers and is a not-for-profit public corporation. See <https://acepr.com/en-us>.

⁸⁸⁴ FEMA, "FEMA Approves More Than \$140 Million in Assistance to Puerto Rico," Oct. 11, 2017, <https://www.fema.gov/press-release/20210318/fema-approves-more-140-million-assistance-puerto-rico>.

⁸⁸⁵ DHS OIG, *FEMA Should Not Have Awarded Two Contracts to Bronze Star LLC*, May 7, 2019, p. 3, https://www.oversight.gov/sites/default/files/oig-reports/OIG-19-38-May19_0.pdf.

supply tarps to Puerto Rico.⁸⁸⁶ Bronze Star was a new company that had never received a government contract, or had ever supplied tarps or plastic sheeting.⁸⁸⁷

By October 23, 2017, FEMA had awarded more than \$114 million to individuals for housing assistance and critical needs.⁸⁸⁸ Over 800,000 survivors had registered for various types of disaster assistance throughout Puerto Rico's 78 municipalities. The SBA had approved more than \$2.3 million in disaster assistance loans. In addition, more than \$384.2 million in Public Assistance had been awarded for funding to state and local organizations to perform emergency protective measures such as the use of temporary generators, flood control, conducting safety inspections, and debris removal. This assistance included more than \$215 million to PREPA, and \$70 million to the Puerto Rico Aqueduct and Sewer Authority to perform repairs to aid in the restoration of power and water services to Puerto Rico's estimated 3.5 million residents. The remaining \$99.2 million in public assistance funding was awarded to multiple public and qualifying nonprofit organizations.⁸⁸⁹

FEMA reported widespread infrastructure damage across the Island.⁸⁹⁰ For instance, immediately following María, 12 percent of the population had cellphone access and the power grid remained down until November 17, with rolling outages through May 2018.⁸⁹¹ In light of these infrastructure issues, an amendment to the presidential disaster declaration for María on November 2, 2017, stated that due to the extraordinary level of infrastructure damage, as well as Puerto Rico's difficult financial position, FEMA must obligate all large project funding for Public Assistance permanent work through alternative procedures.⁸⁹² The alternative procedures require awards for permanent work projects to be made based on fixed-cost estimates to provide financial incentives for the timely and cost-effective completion of work. Additionally, it makes the recipient or subrecipient responsible for any project costs that exceed the agreed-upon fixed-cost estimate.⁸⁹³ However, if actual costs are less than the fixed-cost estimate, the recipient or subrecipient could use all or part of the excess funds for other eligible purposes, such as additional hazard mitigation measures to increase the resilience of public infrastructure.⁸⁹⁴

⁸⁸⁶ Ibid; *See also* Tami Abdollah and Michael Biesecker, "Big contracts, no storm tarps for Puerto Rico," *AP News*, Nov. 28, 2017, <https://apnews.com/article/business-storms-only-on-ap-hurricane-harvey-puerto-rico-cbeff1a939324610b7a02b88f30eafbb>.

⁸⁸⁷ Navarro Statement, at 7.

⁸⁸⁸ FEMA, "FEMA Approves More Than \$500 Million in Assistance to Puerto Rico," Oct. 23, 2017, <https://www.fema.gov/press-release/20210318/fema-approves-more-500-million-assistance-puerto-rico>.

⁸⁸⁹ Ibid.

⁸⁹⁰ FEMA, *2017 Hurricane Season After-Action Report*.

⁸⁹¹ Ibid, at 2.

⁸⁹² 82 Fed. Reg. 53,514; *see also* GAO, *Puerto Rico Recovery: FEMA Made Progress in Approving Projects, But Should Identify and Assess Risks to the Recovery*, May 19, 2021, p. 14, <https://www.gao.gov/products/gao-21-264>.

⁸⁹³ Ibid.

⁸⁹⁴ GAO, *Puerto Rico Recovery: FEMA Made Progress in Approving Projects, But Should Identify and Assess Risks to the Recovery*, p. 14.

By December 20, 2017, more than \$724 million had been granted to 10,000 homeowners and renters; the SBA had distributed more than \$144 million in low-interest disaster loans to 3,700 businesses and residents; FEMA approved more than \$53 million for debris removal and \$417 million for emergency protective measures, and the National Flood Insurance Program paid approximately \$2.8 million in claims.⁸⁹⁵

On July 16, 2018, FEMA awarded more than \$140 million in Public Assistance grants for debris removal and emergency protective measures, including nearly \$16.9 million to San Juan, more than \$13.2 million to PREPA, more than \$10.2 million to the Puerto Rican Police Department, more than \$9.3 million to the Puerto Rico Emergency Management Agency, more than \$9.6 million to the municipality of Naranjito, and more than \$8.1 million to the Puerto Rico Department of Education.⁸⁹⁶

On February 7, 2019, FEMA awarded \$61 million in additional funds to Puerto Rico, bringing the amount of funds obligated under the PA program to \$5.4 billion.⁸⁹⁷ These grants provided the Puerto Rico Public Housing Administration \$33 million for emergency protective measures and nearly \$17 million to relocate public housing projects in the municipality of Ciales, nearly \$4 million to the Inter American University of Puerto Rico for emergency protective measures, more than \$2 million to the Puerto Rico National Guard to repair hurricane-damaged buildings, nearly \$2 million to the Puerto Rico Aqueduct and Sewer Authority for water monitoring expenses, nearly \$2 million to the Puerto Rico Department of Transportation for permanent work on roads, and more than \$1 million to the municipality of Yauco for emergency protective measures.⁸⁹⁸

On May 8, 2019, FEMA awarded approximately \$21 million in additional funds: nearly \$17.8 million to Puerto Rico's Central Office for Recovery, Reconstruction and Resiliency (COR3) for emergency protective measures, and nearly \$3.1 million to the Puerto Rico Public Housing Administration for administrative costs.⁸⁹⁹ The Puerto Rican government created COR3 to be responsible for receiving and disbursing FEMA funds.⁹⁰⁰ COR3 is responsible for providing technical assistance and ensuring that subrecipient activities are carried out in full compliance with FEMA and other federal, state, and local requirements, and subrecipients are responsible for

⁸⁹⁵ FEMA, "Disaster Assistance in Puerto Rico 90 Days After Hurricane María," Dec. 20, 2017, <https://www.fema.gov/press-release/20210318/disaster-assistance-puerto-rico-90-days-after-hurricane-maria>.

⁸⁹⁶ FEMA, "FEMA approves another \$140 Million for Recovery in Puerto Rico," Jul. 16, 2018, <https://www.fema.gov/press-release/20210318/fema-approves-another-140-million-recovery-puerto-rico>.

⁸⁹⁷ FEMA, "FEMA Approves \$61 Million in Additional Federal Grants to Puerto Rico," Feb. 7, 2019, <https://www.fema.gov/press-release/20210318/fema-approves-61-million-additional-federal-grants-puerto-rico>.

⁸⁹⁸ Ibid.

⁸⁹⁹ FEMA, "FEMA Approves Nearly \$21 Million in Additional Grants to Puerto Rico," May 8, 2019, <https://www.fema.gov/press-release/20210318/fema-approves-nearly-21-million-additional-grants-puerto-rico>.

⁹⁰⁰ Hon. Omar J. Marrero, Secretary of State, Commonwealth of Puerto Rico, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm'n on Civil Rights, Dec. 10, 2021, at 3 (herein Marrero Statement).

actual procurement and project execution pursuant to applicable federal, state, and local regulations, which in most cases mandate a full and open competitive process.⁹⁰¹

On June 3, 2019, FEMA implemented the new PA program delivery model in Puerto Rico intended to improve efficiency, accuracy, and transparency in the Public Assistance award process, and also established a Consolidated Resource Center in Puerto Rico.⁹⁰² Before the 2017 storms, FEMA had begun to redesign the PA program, yet had not implemented the new model in Puerto Rico until 2019.⁹⁰³ In August 2019, FEMA developed an accelerated award strategy that allowed PREPA and the Department of Education to use a sample of the information needed to extrapolate costs and develop a fixed-cost estimate for permanent work projects. This is different from the non-accelerated approach where the costs for each damaged site are calculated to create the fixed cost estimates. Using the accelerated award strategy, FEMA approved \$10.7 billion, \$4.2 billion, and \$2.35 billion in fixed-cost estimates for the abovementioned entities, respectively, and obligated \$9.46 billion, \$3.66 billion, and \$2.06 billion in federal share, respectively. Under this approach, the obligation of the fixed cost estimate works as a recovery budget rather than authorization for the construction of projects.⁹⁰⁴

On January 23, 2020, FEMA made use of Public Assistance alternative procedures optional for the repair of non-critical service facilities damaged by María.⁹⁰⁵ Section 428 of the Stafford Act authorizes alternative procedures for the PA program and also authorizes FEMA to implement the alternative procedures through a pilot program.⁹⁰⁶ As described above, alternative procedures require FEMA to obligate funds to cover fixed-cost estimates developed before the project begins, in contrast to standard PA in which FEMA obligates funds equivalent to the actual cost of the project.⁹⁰⁷ These alternative procedures are intended to provide an incentive for state and local entities to ensure efficiency and avoid cost over-runs,⁹⁰⁸ but use of these alternative procedures can delay a project's obligation because more time is required to develop a fixed-cost estimate.⁹⁰⁹ Moreover, if final costs for a project are more than the approved fixed-cost, FEMA

⁹⁰¹ Ibid.

⁹⁰² GAO, *Puerto Rico Recovery: FEMA Made Progress in Approving Projects, But Should Identify and Assess Risks to the Recovery*, p. 21.

⁹⁰³ The new Public Assistance program delivery model had already been implemented for disasters declared since September 2017 but was not initially used for hurricanes Irma and María in Puerto Rico. FEMA released the new model guidance after Hurricane Irma recovery efforts were already underway, and officials stated they did not want to change the process after Hurricane María. However, FEMA officials stated that the agency decided to begin using the model in Puerto Rico in June 2019 to ensure program consistency with other recoveries.

Ibid.

⁹⁰⁴ Ibid, at 21-22.

⁹⁰⁵ Ibid, at 22.

⁹⁰⁶ FEMA, *Public Assistance Alternative Procedures (Section 428)*, Feb. 10, 2020, https://recovery.pr/documents/PAAP_Guide_for_Permanent_Work_DR_4339_PR_V3_2_10_2020_FINAL_508.pdf.

⁹⁰⁷ See, *supra* note 892.

⁹⁰⁸ FEMA, *Public Assistance Alternative Procedures*.

⁹⁰⁹ Marxuach Statement, at 4.

will not approve additional funds,⁹¹⁰ and municipal governments are responsible for extra expenses incurred.⁹¹¹ There is no mention as to assigning responsibility for delays leading to increases in costs,⁹¹² and as discussed later in this chapter, contractors hiring subcontractors that in turn hired additional subcontractors would sometimes result in extremely high costs for materials and labor and cause significant delays in the recovery efforts.⁹¹³

Carla Minet, Executive Director of Centro de Periodismo Investigativo claimed that FEMA should not have applied Section 428 to the entire Commonwealth of Puerto Rico. Since its implementation after Hurricane Sandy in 2013, Section 428 has only been applied to 258 projects in 28 states but has never been applied to an entire jurisdiction as was done following Hurricane María.⁹¹⁴ Minet explained that “if costs increase after estimates are approved, municipal governments are responsible for the extra expenses incurred,” and that FEMA will not disburse additional funds to cover the difference.⁹¹⁵

Furthermore, Sergio Marxuach, Policy Director at the non-partisan Center for a New Economy, discussed the benefits and challenges of using alternative procedures under Section 428 of the Stafford Act for all large public assistance permanent work projects.⁹¹⁶

For Puerto Rico, the advantage of using these alternative procedures is that federal money will be obligated in full once there is agreement between the parties on the cost estimate for a particular project. The downside is that if the project is over-budget, it will be up to the government of Puerto Rico, which is undergoing a bankruptcy process, to fund the cost overrun. However, if there are any savings, the government of Puerto Rico could use those savings for other recovery-related activities. The advantage for the federal government is that it limits its exposure to the pre-agreed fixed cost estimate amount.⁹¹⁷

Marxuach wrote that the delay in receiving funds

is largely due to the requirement that FEMA and the government of Puerto Rico use alternative procedures under Section 428 of the Stafford Act for all large Public

⁹¹⁰ FEMA, *Public Assistance Alternative Procedures (Section 428)*.

⁹¹¹ Cristina Miranda, Executive Director, La Liga de Cuidades de Puerto Rico, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm’n on Civil Rights, Dec. 10, 2021, at 3 (herein Miranda Statement).

⁹¹² *Ibid.*

⁹¹³ *See, infra* note 1005.

⁹¹⁴ Carla Minet, Executive Director, Centro de Periodismo Investigativo, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm’n on Civil Rights, Dec. 10, 2021, at 3 (herein Minet Statement).

⁹¹⁵ *Ibid.*

⁹¹⁶ Marxuach Statement, at 3.

⁹¹⁷ *Ibid.*, at 4.

Assistance permanent work projects ... [which] required that FEMA obligate all large project funding for Public Assistance permanent work through alternative procedures.⁹¹⁸

Similarly, Minet asserts that:

With Section 428, the federal government was promising stronger and more resilient construction [on Puerto Rico]. The governor agreed to Section 428 because that was the only way FEMA would agree to help Puerto Rico. A year after the approval of Section 428, no projects had been green lit [i.e., given approval to be started]. There was also no agreement on a fixed cost estimate for any of the rebuilding projects. [In the absence of those], not a single project could get started.⁹¹⁹

On February 26, 2020, FEMA and COR3 obligated over \$44 million across nine projects for recovery efforts related to María.⁹²⁰ Over \$18.7 million was obligated to the Puerto Rico Department of Transportation to replace damaged road signs on 416 roads across nearly 814 miles, in the regions of Guayama, Humacao, Mayagüez, and Ponce. The University of Puerto Rico was awarded nearly \$7.3 million for repairs to its Bayamón campus. The municipality of Juana Díaz also received nearly \$5 million for the Raúl Torres baseball park, an important community landmark. The remaining obligations were awarded to the municipalities of Adjuntas, Bayamón, Cidra, Naranjito, Yauco, and the Puerto Rico Department of Sports and Recreation.⁹²¹ As of February 26, FEMA had obligated nearly \$6.4 billion to Puerto Rico as part of the Public Assistance program.⁹²²

In September 2020, FEMA obligated \$48.7 million in additional grants to 12 projects to repair several campuses of the University of Puerto Rico.⁹²³

As of June 15, 2021, FEMA received 1,120,770 registrations for individual assistance (IHP), of which 1,120,770 were determined to be valid, 894,514 were referred, and 475,314 were deemed eligible.⁹²⁴ For Housing Assistance (HA), 231,345 applications were deemed eligible from 746,986 referrals, the average amount of HA provided was \$3,321.45, and the total HA dollars approved was \$768,069,538.41. The average repair amount was \$3,643.09. The rental amount paid for María survivors was over \$138 million, with the average rental of \$2,956.17. Under

⁹¹⁸ *Ibid.*, at 3.

⁹¹⁹ Carla Minet, Podcast CPI, Vieques and the Promise to Build Back Better, Time: 8:01-18:40.

[Podcast CPI: Vieques and the Promise To Build Back Better on Apple Podcasts](#)

⁹²⁰ FEMA, “FEMA and COR3 Obligate Over \$44 Million for Recovery Work Related to Hurricane María,” Feb. 26, 2020, <https://www.fema.gov/news-release/20200514/fema-and-cor3-obligate-over-44-million-recovery-work-related-hurricane-maria>.

⁹²¹ *Ibid.*

⁹²² *Ibid.*

⁹²³ FEMA, “FEMA Obligates Nearly \$49 Million for the University of Puerto Rico,” Oct. 7, 2020, <https://www.fema.gov/press-release/20210318/fema-obligates-nearly-49-million-university-puerto-rico>.

⁹²⁴ Joint FEMA Statement, at 5; FEMA Supplemental Testimony FIDA 38861 Program Summary.

Direct Housing, FEMA provided 408 temporary housing units (see Table 8, comparing the response to Hurricanes Harvey and María). There were also 4,378 Group Flood Insurance Policies paid for a total of \$2,626,000.⁹²⁵

The precise number of dollars obligated for various FEMA programs vary over time and across official webpages. For instance, in November 2021, the fact sheet “Hurricane María: By The Numbers” indicated that FEMA had obligated \$25.7 billion obligated in Public Assistance and \$100 million for the Hazard Mitigation Grant Program.⁹²⁶ However, a different FEMA webpage providing information on funding obligations for Hurricane María from November 2021 indicates that FEMA had obligated \$19 billion in Public Assistance and \$54 million for the Hazard Mitigation Grant Program.⁹²⁷ This inconsistency in reporting how much funding has been provided creates difficulty in the ability to track funding streams, and highlights the need for greater transparency, which is discussed further in Chapter 4.

According to the official COR3 website, as of December 17, 2021, FEMA has allocated \$38.9 billion in recovery funding for María, and approximately \$14.7 billion, or 37.8 percent, has been disbursed.⁹²⁸ The Hazard Mitigation Grant Program, as described above, focuses on risk reduction and protection from future hazardous events.⁹²⁹ The Commission received testimony that as of September 2021, only 19 of 592 proposed mitigation projects had been approved.⁹³⁰ The Hispanic Federation, a national Hispanic nonprofit, had responded to COR3’s 2019 invitation for letters of intent with a proposal and completed registration, but as of December 10, 2021, had not received a response denying or approving the proposed work.⁹³¹ Additionally, the application for the project needed to be completed in English.⁹³²

When Puerto Rico received the major disaster declaration for María, FEMA implemented a manual drawdown process for eligible PA projects that restricted COR3 from exercising the responsibilities normally authorized for recipients under the Stafford Act and its governing regulations.⁹³³ According to the Hon. Omar Marrero, Secretary of State for the Commonwealth of Puerto Rico, this was highly unusual because the manual drawdown process, usually only applies if FEMA formally declares a recipient as high risk, which was not the case for Puerto

⁹²⁵ FEMA Supplemental Testimony FIDA 38861 Program Summary.

⁹²⁶ FEMA, *Hurricane Maria By The Numbers*, Nov. 2, 2021, <https://www.fema.gov/fact-sheet/hurricane-maria-numbers> (accessed Dec. 17, 2021) [on file].

⁹²⁷ FEMA, *Puerto Rico Hurricane Maria*, Nov. 3, 2021, <https://www.fema.gov/disaster/4339> (accessed Dec. 17, 2021) [on file].

⁹²⁸ Central Office for Recovery, Reconstruction, and Resiliency COR3, Financial Summary, <https://recovery.pr/en/financial-analysis/financial-summary>, last accessed Dec. 17, 2021; *see also* Marrero Statement, at 2.

⁹²⁹ *See, supra* note 380.

⁹³⁰ Navarro Statement, at 13.

⁹³¹ *Ibid.*

⁹³² *Ibid.*

⁹³³ Marrero Statement, at 4.

Rico, except for the bankruptcy process.⁹³⁴ This process proved to be too time-consuming and failed to address the cash flow needs of the subrecipients, so FEMA and COR3 came to an understanding that updated its process for low-risk subrecipients, and this process was formalized into an agreement on April 1, 2019.⁹³⁵ Prior to this date, all reimbursements were reviewed and disbursed directly by FEMA as opposed to COR3.⁹³⁶

Disaster Recovery Centers and Other Assistance Made Available

The Small Business Administration established recovery centers within 13 days in Puerto Rico following Hurricane María.⁹³⁷ As of March 30, 2018, the SBA had staffed a total of 154 recovery centers in Puerto Rico.⁹³⁸ FEMA reported to the Commission that they opened 67 Disaster Recovery Centers with rotating personnel of over 800 staff throughout the operation.⁹³⁹ The center in San Juan opened on December 26, 2017,⁹⁴⁰ which closed at some point and reopened in April 2018.⁹⁴¹ Many – at least two – of these centers closed in 2018⁹⁴² or moved

⁹³⁴ Ibid.

⁹³⁵ Ibid.

⁹³⁶ Ibid.

⁹³⁷ SBA OIG, *Consolidated Results of SBA's Initial Disaster Assistance Response to Hurricanes Harvey, Irma, and María*, Dec. 22, 2020, p. 4, <https://www.sba.gov/sites/default/files/2020-12/SBA%20OIG%20Report%2021-05.pdf>.

⁹³⁸ Ibid.

⁹³⁹ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 31.

⁹⁴⁰ FEMA, “FEMA Disaster Recovery Center Now Open in San Juan,” Dec. 26, 2017, <https://www.fema.gov/press-release/20210318/fema-disaster-recovery-center-now-open-san-juan>.

⁹⁴¹ FEMA, “Disaster Recovery Center Reopens in San Juan,” Apr. 27, 2018, <https://www.fema.gov/press-release/20210318/disaster-recovery-center-reopens-san-juan>.

⁹⁴² FEMA, “Two FEMA Disaster Recovery Centers Closing but Help Still Available,” Aug. 24, 2018, <https://www.fema.gov/press-release/20210318/two-fema-disaster-recovery-centers-closing-help-still-available>; FEMA, “Disaster Recovery Center in Las Marías Closing but Help Still Available,” Jun. 26, 2018, <https://www.fema.gov/press-release/20210318/disaster-recovery-center-las-marias-closing-help-still-available>; FEMA, “Four Disaster Recovery Centers Closing but FEMA is Still Here,” Sept. 10, 2018, <https://www.fema.gov/press-release/20210318/four-disaster-recovery-centers-closing-fema-still-here>; FEMA, “FEMA Disaster Recovery Center in Maricao Closing but Help Still Available,” Jul. 28, 2018, <https://www.fema.gov/press-release/20210318/fema-disaster-recovery-center-maricao-closing-help-still-available>; FEMA, “FEMA Disaster Recovery Center in Catano Closing but Help Still Available,” Mar. 12, 2018, <https://www.fema.gov/press-release/20210318/fema-disaster-recovery-center-catano-closing-help-still-available>; FEMA, “FEMA Disaster Recovery Center in Trujillo Alto Closing but Help Still Available,” Sept. 20, 2018, <https://www.fema.gov/press-release/20210318/fema-disaster-recovery-center-trujillo-alto-closing-help-still-available>; FEMA, “FEMA Disaster Recovery Center in Arroyo Closing but Help Still Available,” Mar. 21, 2018, <https://www.fema.gov/press-release/20210318/fema-disaster-recovery-center-arroyo-closing-help-still-available>; FEMA, “FEMA Disaster Recovery Center in Toa Baja Closing, Help Still Available,” Sept. 28, 2018, <https://www.fema.gov/press-release/20210318/fema-disaster-recovery-center-toa-baja-closing-help-still-available>; FEMA, “FEMA Disaster Recovery Center in Adjuntas Closing but Help Still Available,” Jul. 28, 2018, <https://www.fema.gov/press-release/20210318/fema-disaster-recovery-center-adjuntas-closing-help-still-available>; FEMA, “Luquillo Disaster Recovery Center to Close June 28 But Help Still Available,” Jun. 27, 2018, <https://www.fema.gov/press-release/20210318/luquillo-disaster-recovery-center-close-june-28-help-still-available>; FEMA, “FEMA Disaster Recovery Center in Patillas Closing but Help Still Available,” Aug. 30, 2018, <https://www.fema.gov/press-release/20210318/fema-disaster-recovery-center-patillas-closing-help-still-available>; FEMA, “Six Disaster Recovery Centers Closing but FEMA is Still Here,” Sept. 4, 2018,

locations⁹⁴³ and at least nine Community Recovery Centers⁹⁴⁴ closed in 2018-2019.⁹⁴⁵ The Commission received testimony calling attention to the diverse geography of the Island, as analysis at the Center for Puerto Rican Studies at Hunter College found that only in the San Juan area was the number of staffers to aid applicants proportionate to the population, despite the impact seen across the entirety of the territory.⁹⁴⁶ Table 6 below provides the location of Disaster Recovery Centers and their peak staffing numbers.

Table 6 Location and Disaster Recovery Centers and Peak Staffing Numbers

Duty Station	Reached Peak Staffing	Maximum Staff
Vieques, Puerto Rico - DRC	10/16/2017	6
Culebra Pueblo, Puerto Rico - DRC	10/25/2017	6
Adjuntas, Puerto Rico - DRC 26 Branch IV	11/14/2017	13
Ponce, Puerto Rico - DRC 03 Branch 4	11/18/2017	44
Naranjito, Puerto Rico - DRC 17 Branch 2	11/19/2017	12
Utua, Puerto Rico - DRC 23 Branch 2	11/19/2017	13
Mayaguez, Puerto Rico - DRC 01 Branch 1	11/23/2017	29
Guanica, Puerto Rico - DRC 25 Branch 4	11/27/2017	24
Lares, Puerto Rico - DRC 24 Branch 2	12/1/2017	11
Canovanas, Puerto Rico - DRC 20 Branch 3	12/2/2017	13
Yauco, Puerto Rico - DRC 29 Branch 4	12/7/2017	20
Guayama, Puerto Rico - DRC 09 Branch 4	12/10/2017	22
Manati, Puerto Rico - DRC 15 Branch 2	12/12/2017	25

<https://www.fema.gov/press-release/20210318/six-disaster-recovery-centers-closing-fema-still-here>, FEMA,

“FEMA Disaster Recovery Center in San Sebastián Closing, Help Still Available,” Sept. 27, 2018,

<https://www.fema.gov/press-release/20210318/fema-disaster-recovery-center-san-sebastian-closing-help-still-available>.

⁹⁴³ FEMA, “Disaster Recovery Center in Aibonito Changes Locations,” Aug. 10, 2018, <https://www.fema.gov/press-release/20210318/disaster-recovery-center-aibonito-changes-locations>; FEMA, “Disaster Recovery Center in Juncos Changes Locations,” Jun. 22, 2018, <https://www.fema.gov/press-release/20210318/disaster-recovery-center-juncos-changes-locations>.

⁹⁴⁴ A Community Recover Center will sometimes open after a Disaster Recovery Center closes. See FEMA, “Disaster Recovery Center Transitioning to Community Recovery Center,” Mar. 15, 2019,

<https://www.fema.gov/press-release/20210318/disaster-recovery-center-transitioning-community-recovery-center>.

⁹⁴⁵ FEMA, “Help Still Available as Community Recovery Centers Close,” Nov. 4, 2019,

<https://www.fema.gov/press-release/20210318/help-still-available-community-recovery-centers-close-0>; FEMA,

“Help Still Available as Community Recovery Centers Close,” Oct. 26, 2019, <https://www.fema.gov/press-release/20210318/help-still-available-community-recovery-centers-close>; FEMA, “Community Recovery Center in Vega Alta Closing, Help Still Available,” Dec. 26, 2018, <https://www.fema.gov/press-release/20210318/community-recovery-center-vega-alta-closing-help-still-available>.

⁹⁴⁶ Yarimar Bonilla, Director, Center for Puerto Rican Studies at Hunter College, testimony, *Puerto Rico Briefing*, pp. 123-124

Toa Baja, Puerto Rico - DRC 11 Branch 5	12/12/2017	19
Caguas, Puerto Rico - DRC 28 Branch 3	12/19/2017	25
Culebra, Puerto Rico - DRC 19 Branch 3	12/19/2017	6
Humacao, Puerto Rico - DRC 02 Branch 3	12/19/2017	19
Las Marías, Puerto Rico - DRC 31 Branch I	12/19/2017	9
Fajardo, Puerto Rico - DRC 21 Branch 3	12/20/2017	18
Ciales, Puerto Rico - DRC 30 Branch 2	12/22/2017	11
Guaynabo, Puerto Rico - DRC 12 Branch 5	12/22/2017	23
Loiza, Puerto Rico - DRC 32 Branch 3	12/22/2017	14
Carolina, Puerto Rico - DRC 06 Branch 5	12/23/2017	20
Rio Grande, Puerto Rico - DRC 07 Branch 3	12/23/2017	23
Salinas, Puerto Rico - DRC 36 Branch 4	12/23/2017	11
Cayey, Puerto Rico - DRC 08 Branch 3	12/24/2017	26
Maunabo, Puerto Rico - DRC 38 Branch 3	12/28/2017	11
Gurabo, Puerto Rico - DRC 22 Branch 3	1/4/2018	2
Juncos, Puerto Rico – DRC 43 Branch 3	1/4/2018	10
San German, Puerto Rico - DRC 40 Branch I	1/14/2018	13
Cabo Rojo, Puerto Rico - DRC 50 Branch I	1/18/2018	6
Luquillo, Puerto Rico - DRC 52 Branch III	1/23/2018	1
Maricao, Puerto Rico - DRC 49 - Branch I	1/25/2018	7
Trujillo Alto, Puerto Rico - DRC 55 Branch 5	1/31/2018	8
Lajas, Puerto Rico - DRC 56 Branch I	2/1/2018	6
Florida, Puerto Rico - DRC 57 Branch 2	2/2/2018	6
Patillas, Puerto Rico - DRC 62 Branch 4	2/9/2018	1
Aguada, Puerto Rico - DRC 60 Branch 1	2/13/2018	3
Cataño, Puerto Rico - DRC 51 Branch III	2/13/2018	6
Barranquitas, Puerto Rico - DRC 05 Branch 2	2/14/2018	18
Camuy, Puerto Rico - DRC 14 Branch 2	2/15/2018	16
Barceloneta, Puerto Rico - DRC 41 Branch 2	2/23/2018	3
Cidra, Puerto Rico - DRC 46 Branch 3	3/2/2018	9
Bayamon, Puerto Rico - DRC 10 Branch 5	3/12/2018	18
Santa Isabel, Puerto Rico - DRC 59 Branch 4	3/21/2018	5
Guayanilla, Puerto Rico - DRC 58 Branch 4	3/25/2018	8
Jayuya, Puerto Rico - DRC 45 Branch 4	3/26/2018	14
Arecibo, Puerto Rico - DRC 04 Branch 2	3/27/2018	16
Orocovis, Puerto Rico - DRC 16 Branch 2	3/27/2018	16
Aguadilla, Puerto Rico - DRC 13 Branch 1	3/29/2018	24
Morovis, Puerto Rico - DRC 54- Branch II	4/18/2018	2
Las Piedras, Puerto Rico - DRC 44 Branch 3	4/21/2018	1

Coamo, Puerto Rico - DRC 33 Branch 4	5/16/2018	16
Rincon, Puerto Rico - DRC 63 Branch 1	5/26/2018	6
Vieques, Puerto Rico - DRC 18 Branch -3	6/8/2018	18
Juana Diaz, Puerto Rico - DRC 37 Branch 4	7/3/2018	15
Dorado, Puerto Rico - DRC 53 Branch 5	7/7/2018	1
Vega Alta, Puerto Rico - DRC 61 Branch 2	7/17/2018	8
Isabela, Puerto Rico - DRC 42 Branch I	7/21/2018	7
San Juan, Puerto Rico - DRC 27 Branch 5	7/25/2018	17
Yabucoa, Puerto Rico - DRC 48 Branch 3	8/24/2018	8
San Sebastian, Puerto Rico - DRC 35 Branch 1	9/18/2018	12
Villalba, Puerto Rico - DRC 39 Branch 4	9/27/2018	12
Aibonito, Puerto Rico - DRC 64 Branch 3	10/3/2018	7
Comerio, Puerto Rico - DRC 36 Branch 2	10/22/2018	7
Aguas Buenas, Puerto Rico - DRC 65 Branch 3	6/4/2018	7
Toa Alta, Puerto Rico - DRC 47 Branch 2	6/4/2018	8
Staffing Total		826

Source: Federal Emergency Management Agency, FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, Supplemental at 31-32 [on file].

FEMA maintained, and continues to maintain, a Survivor Assistance Helpline which is available to survivors immediately following any incident. FEMA maintains a public-facing Center locator with the locations of Centers provided to anyone seeking that information.⁹⁴⁷ FEMA told the Commission that it contracted fully bilingual local personnel to assist in the response effort, and also contracted the services of Sign Language interpreters and English to Spanish interpreters and translators to provide access to information to the deaf community as well as the population with limited English proficiency. This contract is still ongoing for recovery operations.⁹⁴⁸

Housing

The Commission received testimony that FEMA's refusal to activate the Disaster Housing Assistance Program (DHAP) may have rendered some survivors homeless.⁹⁴⁹ DHAP is a grant program managed jointly by FEMA and HUD.⁹⁵⁰ Under DHAP, displaced families receive longer-term direct rental assistance and case management services provided by local housing professionals with extensive knowledge of the local housing market.⁹⁵¹ This assistance is intended to help families find permanent housing solutions, secure employment, and connect to

⁹⁴⁷ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 31.

⁹⁴⁸ Ibid.

⁹⁴⁹ Yentel Statement, at 3.

⁹⁵⁰ GAO, *Improved Cost Data and Guidance Would Aid FEMA Activation Decisions*, Dec. 2020, <https://www.gao.gov/assets/gao-21-116.pdf>.

⁹⁵¹ Yentel Statement, at 3.

public benefits as they rebuild their lives.⁹⁵² During past disasters, both administrations upheld DHAP as a best practice for disaster housing recovery.⁹⁵³ FEMA indicated that the agency could meet the housing needs of the survivors through its other temporary housing programs, including the Direct Lease Program.⁹⁵⁴ For example, in a letter to the Mayor of Houston, FEMA explained that eligible survivors of Hurricane Harvey who needed direct housing assistance could receive assistance through the Direct Lease and Multifamily Lease and Repair Programs at no cost to them.⁹⁵⁵ Similarly, in a letter to the Governor of Puerto Rico, FEMA stated that the agency preferred the Direct Lease Program to DHAP because it could be implemented more quickly and with less administrative burden because it would not require the agency to enter into agreements with HUD and local Public Housing Authorities for program administration.⁹⁵⁶ Thus, FEMA maintained that DHAP is not necessary to house displaced disaster survivors and cites it as inefficient and not cost effective,⁹⁵⁷ and stated that Transitional Sheltering Assistance (TSA) is intended to reduce the number of disaster survivors in shelters by transitioning survivors into short-term accommodations.⁹⁵⁸ The GAO reported that “[a]lthough FEMA has stated its direct housing programs were relatively more cost-effective than DHAP, FEMA generally could not support the statements with cost data.”⁹⁵⁹

Under TSA, disaster survivors may be eligible to stay in an approved hotel or motel for a limited period of time.⁹⁶⁰ Eligibility requires that applicants register with FEMA for assistance, pass identity verification, have a pre-disaster primary residence in the area designated for TSA, and have been displaced from and unable to live in their pre-disaster residence.⁹⁶¹ FEMA directly pays the cost of the room and taxes to participating hotels and motels. The applicant is responsible for all other costs, including laundry, room service, parking, telephone, food, transportation, or other services.⁹⁶² Low-income families, however, are often unable to access TSA motels due to financial and other barriers, including the practice of motels charging daily “resort” fees and requiring security deposits or credit cards.⁹⁶³ Because TSA must be renewed every 14 days, disaster survivors who do access the program face regular deadlines that require

⁹⁵² Ibid.

⁹⁵³ Ibid.

According to FEMA, based on DHAP lessons learned, it implemented the Direct Lease program, which provided eligible survivors a no-cost temporary housing solution.

FEMA, Response to Affected Agency Review, May 16, 2022 [on file].

⁹⁵⁴ FEMA, Response to Affected Agency Review, May 16, 2022 [on file].

⁹⁵⁵ Ibid.

⁹⁵⁶ Ibid.

⁹⁵⁷ FEMA, “Myths vs. Facts: Disaster Housing Assistance Program for Maria Survivors,” Jun. 7, 2018, <https://www.fema.gov/press-release/20210318/myths-vs-facts-disaster-housing-assistance-program-maria-survivors>.

⁹⁵⁸ FEMA, “Transitional Sheltering Assistance (TSA),” Oct. 15, 2017, <https://www.fema.gov/press-release/20210318/transitional-sheltering-assistance-tsa>.

⁹⁵⁹ GAO, *Improved Cost Data and Guidance Would Aid FEMA Activation Decisions*, p. 10.

⁹⁶⁰ FEMA, “Transitional Sheltering Assistance (TSA).”

⁹⁶¹ Ibid.

⁹⁶² Ibid.

⁹⁶³ Yentel Statement, at 4.

them to resubmit required paperwork or leave the motel before finding a permanent housing solution.⁹⁶⁴

Assistance to TSA-eligible applicants began on October 31, 2017.⁹⁶⁵ Applicants who were in a congregate shelter in Puerto Rico were set to be prioritized, and applicants who self-evacuated to the continental U.S. were also eligible.⁹⁶⁶ During the implementation of the TSA program following Hurricane María, survivors who met eligibility criteria stayed in participating hotels throughout the Island. Some applicants, however, opted to stay in the continental United States.

On February 18, 2018, former Governor Rossello requested, and received, an extension of the TSA program with additional eligibility requirements through May 14, 2018.⁹⁶⁷ On April 20, the governor again requested an extension of the program for approximately 1,700 survivors.⁹⁶⁸ According to FEMA, of the 1,700 survivors, case reviews have shown that hundreds either had no home damage from María or had voluntarily withdrawn their applications for federal assistance.⁹⁶⁹ However, with this extension, those families would be allowed to continue participating in the program while FEMA performed additional case reviews of their eligibility.⁹⁷⁰ U.S. Senator Marco Rubio (R-FL) and former U.S. Senator Bill Nelson (D-FL) urged FEMA to extend the TSA program for María victims through, at least, the remainder of the 2018 school year.⁹⁷¹ FEMA sent a letter on May 3 to the state coordinating officer of Puerto Rico, approving the TSA extension through June 30, and stating that no additional extensions would be considered.⁹⁷² A FEMA spokesperson, referring to TSA as a short-term sheltering option, stated that “survivors are responsible for their own recovery and to actively look for permanent housing solutions.”⁹⁷³ However, given the poverty rates of many displaced families, language barriers, unfamiliarity with systems in the continental U.S., and lack of affordable

⁹⁶⁴ Ibid.

⁹⁶⁵ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, Supplemental at 6 [on file].

⁹⁶⁶ Ibid.

⁹⁶⁷ FEMA, “FEMA continues to support Hurricane María Survivors through extension of Transitional Sheltering Assistance program,” Apr. 20, 2018, <https://www.fema.gov/press-release/20210318/fema-continues-support-hurricane-maria-survivors-through-extension>.

⁹⁶⁸ Ibid.

⁹⁶⁹ Ibid.

⁹⁷⁰ Ibid.

⁹⁷¹ Senator Marco Rubio, “Rubio, Nelson Urge FEMA, Puerto Rico Governor to Extend Housing Assistance for Hurricane María Victims,” Apr. 18, 2018, <https://www.rubio.senate.gov/public/index.cfm/2018/4/rubio-nelson-urge-fema-puerto-rico-governor-to-extend-housing-assistance-for-hurricane-maria-victims>.

⁹⁷² FEMA, Letter to Mr. Hector M. Pesquera re: Transitional Sheltering Assistance and Transportation Assistance FEMA-4336-DR-PR; FEMA-4339-DR-PR, May 3, 2018, <https://drive.google.com/file/d/0B6m3FrMzNqO5Sko5RHhRcIFCUTNkOWtNMzJVREdkeWpoX1Zr/view?resourcekey=0-RiokTuD9GZdmXO8vdND0zg>.

⁹⁷³ Mark Berman, “Families who fled Puerto Rico hurricane devastation find new uncertainty as federal housing aid expires,” *Washington Post*, Jan. 25, 2018, <https://www.washingtonpost.com/news/post-nation/wp/2018/01/25/families-who-fled-puerto-rico-hurricane-devastation-find-new-uncertainty-as-federal-housing-aid-expires/>.

housing, Charlotte Gossett Navarro of the Hispanic Federation testified that this statement “shows the crass disconnect between FEMA and the realities of survivors from Puerto Rico.”⁹⁷⁴

Regarding TSA, a February 2021 DHS OIG audit found that in response to the 2017 disasters, FEMA did not oversee and manage the TSA program to ensure it operated efficiently and effectively to meet disaster survivors’ needs.⁹⁷⁵ Specifically, FEMA did not accurately validate taxes charged for hotel rooms, paid for unoccupied rooms, did not transition survivors from TSA hotels to interim or permanent housing in a timely manner, and did not adequately coordinate with state and local officials to prepare initial housing strategies.⁹⁷⁶ FEMA concurred with both recommendations provided by the OIG office relating to more effective and efficient management of the TSA program.⁹⁷⁷

On April 10, 2018, HUD awarded \$18.5 billion to Puerto Rico to repair damaged homes, businesses, and the electric grid – the largest amount of assistance awarded in the Department’s history, following the \$1.5 billion HUD had previously allocated to the territory in February, bringing HUD’s total investment in Puerto Rico to \$20 billion.⁹⁷⁸ HUD has indicated that the first wave of funding was used to implement best practices and served as a trial to test systems and controls designed to prevent waste, fraud, and mismanagement of funds.⁹⁷⁹ In a 2020 audit of Puerto Rico’s capacity to administer disaster funds, HUD OIG recommended that the Puerto Rico Department of Housing (1) review and update its policies and procedures to prevent duplication of benefits, (2) review and update its procurement policies and procedures, and (3) continue to fill its job vacancies.⁹⁸⁰

A March 2019 GAO report found that HUD was not adequately staffed to meet its oversight objectives and the agency needed to hire and train dedicated staff specializing in disaster recovery only.⁹⁸¹ GAO wrote that in efforts to ensure that disaster assistance funding reaches those most impacted and in the most need, HUD must ensure that grantees have the capacity to administer the funds and are utilizing these funds for eligible and supported items.⁹⁸² The report highlighted that HUD’s oversight plan for the 2017 disaster funding was inadequate because it

⁹⁷⁴ Navarro Statement, at 11.

⁹⁷⁵ DHS OIG, *Better Oversight and Planning are Needed to Improve FEMA’s Transitional Sheltering Assistance Program*, Feb. 11, 2021, <https://www.oig.dhs.gov/sites/default/files/assets/2021-02/OIG-21-20-Feb21.pdf>.

⁹⁷⁶ *Ibid.*

⁹⁷⁷ Recommendation 1 was for FEMA’s Office of Response and Recovery to direct the Mass Care and Emergency Assistance Branch to establish a business unit and delegate authority to ensure effective and efficient implementation, oversight, and management of the TSA program. Recommendation 2 was for FEMA’s Office of Response and Recovery to direct the Mass Care and Emergency Assistance Branch to develop, document, and implement standard operating procedures for the TSA program. *Ibid.*

⁹⁷⁸ HUD, “HUD Awards Record \$18.5 Billion For Puerto Rico Hurricane Recovery,” Apr. 10, 2018, <https://archives.hud.gov/local/pr-vi/news/pr2018-04-10.cfm>.

⁹⁷⁹ Begg Statement, at 4.

⁹⁸⁰ *Ibid.*

⁹⁸¹ *Ibid.*

⁹⁸² *Ibid.*

did not establish proper onsite monitoring visits nor identify deficient risk analyses.⁹⁸³ HUD's Deputy Inspector General, Stephen Begg told the Commission that more actions are necessary to ensure that there is greater accountability in disaster recovery assistance that it is administered efficiently, and that expenditures are eligible and supported.⁹⁸⁴

As of February 28, 2020, HUD OIG's Top Management Challenges report had identified 49 grantees as "slow spenders"⁹⁸⁵ for disasters that impacted major areas from 2011 to 2017.⁹⁸⁶ According to the report, HUD needs to ensure that funds are disbursed in a more timely and efficient manner to benefit disaster survivors.⁹⁸⁷ Delays in funding increase the risk that program objectives will not be reached, which ultimately results in disaster survivors still needing assistance years after a disaster. According to Deputy Inspector General Stephen Begg, HUD OIG is currently auditing HUD's oversight and monitoring of disaster recovery grantees deemed "slow spenders" in an effort to better understand this issue.⁹⁸⁸

In Puerto Rico, HUD CDBG-DR and CDBG-MIT funds were provided only to those able to ensure their homes will comply with flood protection standards.⁹⁸⁹ The program does not aid lower-income disaster survivors to implement mitigation measures, nor does the program ensure that low-income residents are served by mitigation projects.⁹⁹⁰ In Puerto Rico, a large portion of the Island is now considered a flood zone. According to Cristina Miranda, Executive Director of La Liga de Cuidades de Puerto Rico (League of Puerto Rican Cities), the flood advisory maps developed by FEMA and adopted by the Puerto Rican Central Government were incorrect, misleading, and dangerous: "[t]hey do not consider previous mitigation projects, funded with federal funds, and they also exclude many potential beneficiaries by identifying many communities as being in a floodplain."⁹⁹¹ The accuracy of these maps may not reflect the reality of the population, as elevation layers are based on a 1957 survey, yet they are being used to deny assistance and eligibility.⁹⁹²

Additionally, the requirement to carry flood insurance in order to receive assistance, raises several concerns for survivors. For instance, as found with Harvey, flood insurance can be cost prohibitive for many low-income homeowners and due to the floodplain maps, many residents would not be qualified to get a flood policy since their homes reside in a floodplain, even if they

⁹⁸³ Ibid.

⁹⁸⁴ Ibid.

⁹⁸⁵ HUD defines a slow spender as spending 10% less than the monthly pace required to fully use the grant by target closeout date. *See* Begg Statement, at 4.

⁹⁸⁶ Ibid.

⁹⁸⁷ Ibid.

⁹⁸⁸ Ibid.

⁹⁸⁹ Yentel Statement, at 16.

⁹⁹⁰ Ibid.

⁹⁹¹ Miranda Statement, at 4.

⁹⁹² Navarro Statement, at 15; *see also* Martínez-Román Statement, at 8.

could afford it. Therefore, the policy requiring flood protection standards may lead to widespread displacement among the lowest-income and most marginalized communities on the Island,⁹⁹³ since low-income families without safe dwellings would have to relocate if their only other alternatives were to receive no aid at all.⁹⁹⁴ According to Diane Yentel of the National Low Income Housing Coalition:

Puerto Rico's CDBG-DR action plan requires that neighborhoods most at risk of flooding be relocated. Lower-income and predominantly Black communities, such as Loíza, were designated for such relocation, while the nearby, similarly situated, tourist towns, such as Condado, were rated as safe.⁹⁹⁵

The FEMA flood map declared that 95 percent of Loíza is in a flood zone, making it impossible to rebuild due to the requirement of flood insurance.⁹⁹⁶ Yet, Tania Rosario-Méndez, Executive Director of Taller Salud, explained that those same lands can be picked up by private capital, which continues to contribute to the displacement of survivors and families.⁹⁹⁷

In addition to TSA, FEMA also administers the Sheltering and Temporary Essential Power (STEP)⁹⁹⁸ program,⁹⁹⁹ a temporary repair program that provides recovery support through Puerto Rico's Department of Housing.¹⁰⁰⁰ The program, called Tu Hogar Renace, proposed to invest \$1,680,000,000 to assist 75,000 houses on the Island.¹⁰⁰¹ The Tu Hogar Renace program was intended for homes that were not damaged enough to be considered destroyed and could be made habitable with relatively quick remedies like roof repairs, electrical work, and the replacement of doors and windows, sinks, toilets, and appliances.¹⁰⁰² The program did not begin until five months after the hurricane and received more than 11,000 complaints from participants, housing advocates, and even the program's own subcontractors.¹⁰⁰³ Many of the repairs were poorly executed, incomplete, and had to be redone by nonprofit groups and others.¹⁰⁰⁴ The Puerto Rico housing department hired seven major contractors to do the repair work and two more firms to manage the program, and the companies then hired subcontractors, who in turn hired smaller

⁹⁹³ Yentel Statement, at 16; Miranda Statement, at 4.

⁹⁹⁴ Aubert Statement, at 12.

⁹⁹⁵ Yentel Statement, at 16.

⁹⁹⁶ Rosario-Méndez Statement, at 4.

⁹⁹⁷ *Ibid.*

⁹⁹⁸ FEMA discontinued the STEP program as of Oct. 16, 2019. FEMA, Response to Affected Agency Review, May 16, 2022 [on file].

⁹⁹⁹ DHS OIG, *FEMA's Sheltering and Temporary Essential Power Pilot Program*, Dec. 2012, https://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-15_Dec12.pdf.

¹⁰⁰⁰ RAND Corporation, *After Hurricane María*, p. 39, https://www.rand.org/pubs/research_reports/RR2595.html.

¹⁰⁰¹ Aubert Statement, at 4.

¹⁰⁰² Frances Robles, "\$3,700 Generators and \$666 Sinks: FEMA Contractors Charged Steep Markups on Puerto Rico Repairs," *The New York Times*, Nov. 26, 2018, <https://www.nytimes.com/2018/11/26/us/fema-puerto-rico-housing-repairs-maria.html>.

¹⁰⁰³ Navarro Statement, at 11.

¹⁰⁰⁴ *Ibid.*

companies to carry out the actual repairs.¹⁰⁰⁵ This led to contractor rates adding up, to cover a variety of expenses, but the prices charged for equipment sometimes did not properly reflect retail market costs. As the New York Times reported:

The deal the Department of Housing signed required smoke detectors in every sleeping area, so each of the 122,000 houses in the program was equipped with the devices, for which FEMA was billed \$82 apiece. A receipt reviewed by the New York Times showed that one subcontractor ordered them in bulk from an Ace Hardware store in the city of Aguadilla for \$6.99 each.¹⁰⁰⁶

According to a monitoring report published by the Puerto Rico Comptroller in May 2021, between 43-80 percent of the works commissioned to companies were left unfinished.¹⁰⁰⁷ As a result, more than a dozen nonprofit organizations had to raise private funds to execute repairs to construction flaws.¹⁰⁰⁸ Ariadna Godreau Aubert, Executive Director of Ayuda Legal Puerto Rico, testified that the “recovery process has become a revolving door for contractors that generate wealth because of emergencies. For example, companies hired and signaled during the Tu Hogar Renace scheme are now contractors under the CDBG-DR housing programs.” Figure 8 provides a visual representation of contractors shared by both Tu Hogar Renace and the COR3 program.

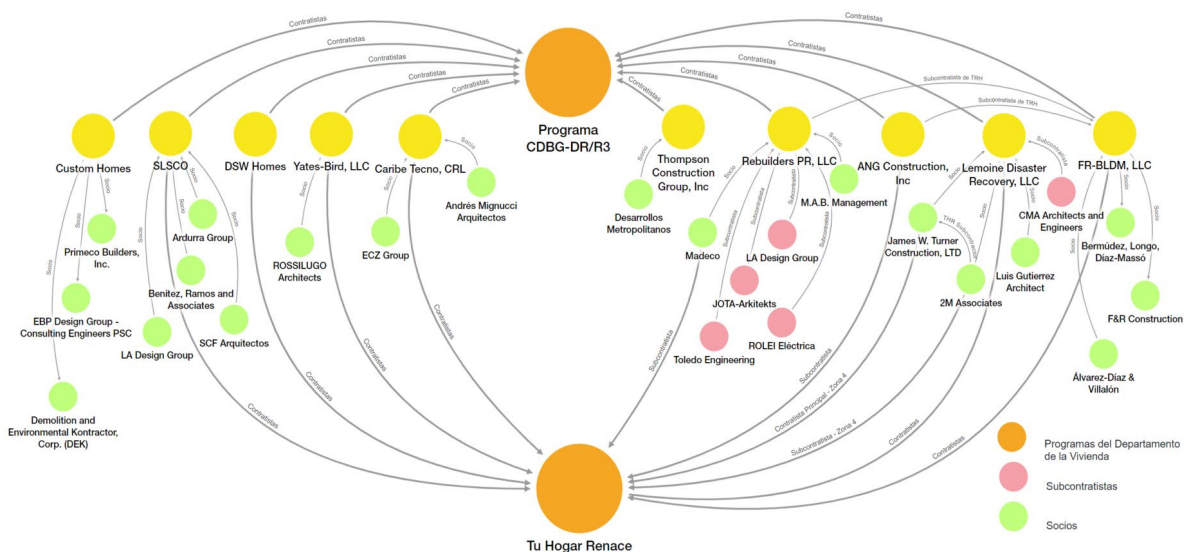
¹⁰⁰⁵ Robles, “\$3,700 Generators and \$666 Sinks: FEMA Contractors Charged Steep Markups on Puerto Rico Repairs.”

¹⁰⁰⁶ Ibid.

¹⁰⁰⁷ Aubert Statement, at 4.

¹⁰⁰⁸ Navarro Statement, at 12.

Figure 8 Contractors shared by Tu Hogar Renace and the COR3 Program



Source: Aubert Statement, at 15.

A 2018 GAO report stated that FEMA’s lack of an updated advance contracting strategy on advance contract use led to “confusion about whether and how to maximize their use to the extent cost-effective and practical to facilitate a faster response when providing goods and services to survivors.”¹⁰⁰⁹

The Post-Katrina Emergency Reform Act of 2006 addressed various shortcomings identified in response to Hurricane Katrina and requires FEMA to maximize the use of advance contracts to the extent practical and cost effective.¹⁰¹⁰ Advance contracts are for recurring disaster response requirements, including specific goods and services for which FEMA is capable of contracting in advance of a natural disaster, acts of terrorism, or other manmade disasters that, when used, may be cost effective.¹⁰¹¹ However, the Inspector General of DHS found that FEMA “did not maximize the use of advance contracts to address identified capability deficiencies in Puerto Rico.”¹⁰¹² For instance, 49 of the 241 contracts awarded by FEMA Region II after María were awarded for the same goods or services covered by existing contracts.¹⁰¹³ Without advance contracts to expedite acquisitions, goods and services for people in need may have been delayed

¹⁰⁰⁹ GAO, *2017 Disaster Contracting – Action Needed to Better Ensure More Effective Use and Management of Advance Contracts*, Dec. 2018, pp. 17-18, <https://www.gao.gov/assets/gao-19-93.pdf>.

¹⁰¹⁰ DHS OIG, *FEMA’s Advance Contract Strategy for Disasters in Puerto Rico*, Mar. 23, 2020, p. 5, <https://www.oig.dhs.gov/sites/default/files/assets/2020-03/OIG-20-20-Mar20.pdf>.

¹⁰¹¹ *Ibid.*, at 2.

¹⁰¹² *Ibid.*, at 4.

¹⁰¹³ *Ibid.*, at 5.

or were more costly to the government.¹⁰¹⁴ FEMA Region II also did not issue any advance contracts between 2007-2017.¹⁰¹⁵

Carla Minet, Executive Director of Centro de Periodismo Investigativo, testified that while COR3 provides the recovery funds allocated by 18 other federal agencies, it does not indicate which entities of the Puerto Rican government received them.¹⁰¹⁶ Additionally, the website of the Recovery Support Function Leadership Group, which links several federal agencies, displays the amounts that have been allocated, committed, and disbursed – yet their data does not match what COR3 provides.¹⁰¹⁷ Minet went on to describe that the Island of Vieques is seeing a lack of coordination and imposition of unjustified federal decisions, in that:

First, they cut the original amount estimated for the health facility, then, they decided that it would not be a hospital, but just a health center. A contractor for this facility said about the process that the work dynamic between FEMA and COR3 is the main obstacle to moving forward.¹⁰¹⁸

FEMA had obligated approximately \$40 million to reconstruct the Vieques Center of Diagnostics and Treatment in January 2020, and as of January 2021, none of the funds had been disbursed by COR3.¹⁰¹⁹ The Commission received testimony indicating widespread distrust with how the Central Government in Puerto Rico managed FEMA funds, specifically with the company contracted by COR3, ICF Incorporated.¹⁰²⁰ As an example, the mayor of Jayuya, the municipality with the most FEMA funds allocated, recently stated: “These people [ICF Incorporated] do not work, and if they work, they change their minds and instructions every day.”¹⁰²¹

Section 307 of the Stafford Act, Use of Local Firms and Individuals states that:

In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency.¹⁰²²

¹⁰¹⁴ Ibid, at 4-5.

¹⁰¹⁵ Ibid, at 6.

¹⁰¹⁶ Minet Statement, at 3.

¹⁰¹⁷ Ibid.

¹⁰¹⁸ Ibid, at 4.

¹⁰¹⁹ DHS OIG, *FEMA's Efforts to Provide Funds to Reconstruct the Vieques Community Health Center*, Jun. 9, 2021, <https://www.oig.dhs.gov/sites/default/files/assets/2021-06/OIG-21-41-Jun21.pdf>.

¹⁰²⁰ Miranda Statement, at 3.

¹⁰²¹ Ibid.

¹⁰²² 42 U.S.C. 5150.

However, the federal contracts examined demonstrated that the bulk of federal spending for relief and reconstruction was not flowing into local businesses, and that Puerto Rican firms that had been hired were to perform lower value activities.¹⁰²³ In June 2021, 28 of the 93 (30 percent) CDBG-DR contracts were with foreign companies, but those 28 received, 63 percent of the total of the contracted funds.¹⁰²⁴ While FEMA has indicated that finding local contractors was a challenge,¹⁰²⁵ the nonprofit Hispanic Federation testified that they have worked with a dozen local organizations capable of doing the work if FEMA wanted to find a way to work with them.¹⁰²⁶

As discussed in Chapter 1, applicants for FEMA aid can face difficulties in proving ownership of their homes in compliance with FEMA's requirements. Many survivors in Puerto Rico faced this issue,¹⁰²⁷ since as many as 55 percent of homeowners did not hold a title at the time of Hurricane María.¹⁰²⁸ Some communities shared collective ownership through land trusts, and others own family properties that had been passed down and divided by family members over generations.¹⁰²⁹ As of May 1, 2018, FEMA had received 1,118,862 million registrations for disaster assistance, had approved 452,290, and had deemed 335,748 as ineligible,¹⁰³⁰ with at least 77,000 denied due to title documentation issues,¹⁰³¹ despite nothing in Puerto Rico's laws or regulations requiring homeowners to register their properties.¹⁰³² Furthermore, FEMA's IHP guidance from 2016 indicated that "FEMA may accept a written statement from the applicant indicating how long they lived in the disaster-damaged residence prior to the Presidential disaster declaration, and an explanation of the circumstances that prevent standard ownership verification (e.g. insular areas, islands, tribal lands)."¹⁰³³ Puerto Rico is defined as an insular area by the U.S. Department of the Interior.¹⁰³⁴

In some cases, ownership verification can run into discrepancies, as a lack of land segregation can lead to multiple dwellings having the same physical address.¹⁰³⁵ The Commission received a public comment from a survivor that was told her residential address and power bill address were different: this was because her road does not have a name and the residential address was the

¹⁰²³ Navarro Statement, at 16.

¹⁰²⁴ Martínez-Román Statement, at 9.

¹⁰²⁵ See, *infra* note 1171.

¹⁰²⁶ Navarro Statement, at 17.

¹⁰²⁷ Nicole Acevedo and Istra Pacheco, "No deeds, no aid to rebuild homes: Puerto Rico's reconstruction challenge," NBC News, May 8, 2018, <https://www.nbcnews.com/storyline/puerto-rico-crisis/no-deeds-no-aid-rebuild-homes-puerto-rico-s-reconstruction-n868396>.

¹⁰²⁸ See, *supra* note 188; see also Navarro Statement, at 9.

¹⁰²⁹ Navarro Statement, at 9.

¹⁰³⁰ Acevedo and Pacheco, "No deeds, no aid to rebuild homes: Puerto Rico's reconstruction challenge."

¹⁰³¹ Yentel Statement, at 6; see also Aubert Statement, at 9.

¹⁰³² Aubert Statement, at 9.

¹⁰³³ FEMA, *Individuals and Households Program Unified Guidance (IHPUG)*, p. 18 (emphasis added).

¹⁰³⁴ U.S. Dep't of the Interior, "Insular Areas of the United States and Freely Associated States," <https://www.doi.gov/library/internet/insular>, (accessed Jan. 19, 2022).

¹⁰³⁵ Rivera Statement, at 3.

closest point on the main road for people to receive directions to her home.¹⁰³⁶ The Commission also received testimony that other survivors were denied entrance to a Disaster Recovery Center because their community was formed by “land rescuers,”¹⁰³⁷ which apparently disqualified them from entering the center or being given the opportunity to argue in favor of their property rights.¹⁰³⁸

For months, the National Low Income Housing Coalition and the Disaster Housing Recovery Coalition pushed FEMA to remove this obstacle to low-income Puerto Ricans receiving needed assistance. Ayuda Legal Huracán María, now known as Ayuda Legal Puerto Rico, an independent nonprofit on the Island, provided critical assistance to Puerto Ricans who sought to file claims for FEMA assistance (e.g., housing, resettlement, relocation, unemployment assistance) among other matters.¹⁰³⁹ Among the project’s many successes was the development of a sworn affidavit form, which together with other documentation, was an acceptable alternative for FEMA in lieu of a title or deed, for documenting the absence of which was a longstanding feature of homeownership in Puerto Rico.¹⁰⁴⁰ However, some FEMA representatives did not know about the new document,¹⁰⁴¹ or did not notify survivors of the form’s availability, or make the statement available online or on social media. Therefore, few survivors were able to use this process to access FEMA assistance.¹⁰⁴² The Commission received testimony that at one point, of the 85,000 applicants denied aid due to ownership verification issues, approximately 5 percent had appealed using the sworn statement.¹⁰⁴³ Adi Martínez-Román of the University of Puerto Rico Law School, testified that of those using the sworn statement, more than 75 percent received aid, which “illustrates the terrible loss of opportunity for the more than 81,000 households of more than 240,000 Puerto Ricans that did not appeal using the sworn statement.”¹⁰⁴⁴ FEMA indicated that they would not notify people who were denied that they had another opportunity to use the sworn affidavit or provide the form in the Disaster Recovery Centers due to the Paper Reduction Act.¹⁰⁴⁵

¹⁰³⁶ Marisol Davila, Public Comment, Nov. 13, 2021 [on file].

¹⁰³⁷ Puerto Rico’s squatter movement, also known as *rescates de terrenos* which is roughly translated as “land rescue.” The movement rose to prominence during the late 1960s when the urban poor population, faced with housing shortages and government neglect, began occupying deserted land – “rescuing” the space by building houses and starting communities there.

Cinema Guild, “Desalambrando: The Documentary,” <http://store.cinemaguild.com/nontheatrical/product/2603.html>.

¹⁰³⁸ Martínez-Román Statement, at 4.

¹⁰³⁹ Juan Cartagena, President and General Counsel, LatinoJustice PRLDEF, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights and Protections Following a Natural Disaster Briefing before the U.S. Comm’n on Civil Rights, Jun. 25, 2021, at 1-2 (herein Cartagena Statement).

¹⁰⁴⁰ Cartagena Statement, at 1-2; Rivera Statement, at 2.

¹⁰⁴¹ Rivera Statement, at 2.

¹⁰⁴² Yentel Statement, at 6; Aubert Statement at 9.

¹⁰⁴³ Martínez-Román Statement at 6.

¹⁰⁴⁴ Ibid.

¹⁰⁴⁵ Ibid, at 5.

Additionally, the FEMA appeals process can be confusing and difficult. The Commission received testimony indicating that a denied applicant must first submit a form explaining the dispute and providing supporting documentation, but FEMA denial letters provide only very vague reasons for the initial denial of assistance; thus determining what documentation to submit with the appeal can pose additional challenges.¹⁰⁴⁶ A denied applicant must refute all possible interpretations of the reason for the denial, or they will lose their appeal.¹⁰⁴⁷ This lack of clarity makes it more difficult for legal aid organizations attempting to inform and assist low-income survivors after a disaster, resulting in appeals taking longer and being more costly, and for low-income survivors with little access to legal representation or money for a protracted legal fight giving up on appealing at all.¹⁰⁴⁸ Amaris Torres Rivera, Executive Director of Fundación Fondo de Acceso a la Justicia, a nonprofit foundation in Puerto Rico that provides funding to nonprofit organizations to offer free legal services to low-income and vulnerable communities, wrote in her statement to the Commission that their legal aids encountered disaster survivors that had submitted between three to five appeals.¹⁰⁴⁹ Rivera explained that “[t]he frustration, distrust, emotional deterioration, and sense of discrimination were the main factors presented by our participants. Still, FFAJ worked – and still works – with title clearance and ownership projects in Puerto Rico.”¹⁰⁵⁰

To combat further challenges survivors faced because of the insistence on having disaster applications filed through hotlines or internet platforms, Ayuda Legal Puerto Rico joined efforts carried out by community leaders to design paper versions of the appeal documents, going into communities, interviewing affected individuals, traveling back to areas with internet access, uploading applications, and returning to the communities to hand down registration numbers.¹⁰⁵¹

The National Low Income Housing Coalition (NLIHC) also filed a FOIA request in December 2018 requesting basic materials, including FEMA’s application for assistance, procedure manuals for determining eligibility, and data sharing agreements with HUD and other federal agencies.¹⁰⁵² As of the Commission briefing in December 2021, FEMA had not provided these materials to NLIHC.¹⁰⁵³ Some survivors who left the Island eventually wanted to return to Puerto Rico, and the Transportation Assistance Program was activated. FEMA provided transportation assistance to survivors in the TSA program who were checked into hotels in the continental U.S. on May 3, 2018.¹⁰⁵⁴ Through Transportation Assistance, FEMA provided payments directly to

¹⁰⁴⁶ Yentel Statement, at 8.

¹⁰⁴⁷ *Ibid*

¹⁰⁴⁸ *Ibid*, at 8-9.

¹⁰⁴⁹ Rivera Statement, at 3.

¹⁰⁵⁰ *Ibid*.

¹⁰⁵¹ Aubert Statement, at 8.

¹⁰⁵² Yentel Statement, at 9.

¹⁰⁵³ *Ibid*.

¹⁰⁵⁴ Joint FEMA Statement, at 13.

airlines to cover the cost of airfare, and up to \$100 in luggage costs per household member and pet fees.¹⁰⁵⁵

As of June 2, 2018, 1,979 FEMA applicants, or 5,501 household members, were housed under the TSA program at 2,123 hotel rooms in 28 states, the District of Columbia, and Puerto Rico. Included in those numbers are 46 Puerto Rico hotels that housed 605 applicants.¹⁰⁵⁶ Overall, 7,027 households participated in the program, and 5,048 have found other housing arrangements.¹⁰⁵⁷ According to FEMA, as of June 22, 2018, 1,827 households were checked into hotels and motels through the TSA program: 559 in Puerto Rico and 1,268 in the continental U.S.¹⁰⁵⁸

On June 30, 2018, evacuees from Puerto Rico brought action against FEMA, seeking to prevent termination of benefits under TSA, which was denied by the court. However, the court strongly advised FEMA to keep the benefits in place until a final ruling was issued on the plaintiffs' request for a preliminary injunction. FEMA terminated all but 113 households and two of the named plaintiffs in that case—for them, FEMA extended assistance under the TSA program for thirty additional days.¹⁰⁵⁹

On July 1, 2018, a federal judge temporarily blocked the government from ending housing aid to the Puerto Ricans living in the continental U.S. for several days,¹⁰⁶⁰ and on July 3 another judge ruled that a temporary restraining order would remain in place until midnight on July 23, 2018, keeping approximately 950 residents in hotels and other FEMA housing units.¹⁰⁶¹ As of July 12, 2018, after at least 335,748 applicants had been denied assistance to repair homes, there had been more than 43,000 appealed cases.¹⁰⁶² Of those, more than 7,500 were approved and more than 34,000 were deemed ineligible.¹⁰⁶³ A U.S. District Judge extended the temporary restraining

¹⁰⁵⁵ Ibid.

¹⁰⁵⁶ FEMA, "FEMA's Transitional Sheltering Assistance Program Ends June 30," Jun. 2, 2018, <https://www.fema.gov/press-release/20210318/femas-transitional-sheltering-assistance-program-ends-june-30>.

¹⁰⁵⁷ Ibid.

¹⁰⁵⁸ FEMA, "Puerto Rico Survivors in Transitional Sheltering Assistance Program Have until June 30 to Get More Help," Jun. 22, 2018, <https://www.fema.gov/press-release/20210318/puerto-rico-survivors-transitional-sheltering-assistance-program-have-until>.

¹⁰⁵⁹ *Santos v. Federal Emergency Management Agency*, 327 F.Supp.3d 328 (D.Mass., 2018).

¹⁰⁶⁰ Emily Birnbaum, "Judge temporarily blocks end to housing assistance for displaced Puerto Ricans," *The Hill*, Jul. 1, 2018, <https://thehill.com/homenews/news/395088-hundreds-of-puerto-ricans-could-be-displaced-by-end-of-temporary-housing>.

¹⁰⁶¹ Justin Carissimo, "Judge orders housing extension for hurricane evacuees as Puerto Rico, FEMA ignite spat," *CBS News*, Updated Jul. 5, 2018, <https://www.cbsnews.com/news/hurricane-maria-evacuees-judge-gives-housing-extension-today-amid-fema-puerto-rico-spat-2018-07-03/>.

¹⁰⁶² Nicole Acevedo, "FEMA has either denied or not approved most appeals for housing aid in Puerto Rico," *NBC News*, Jul. 17, 2018, <https://www.nbcnews.com/storyline/puerto-rico-crisis/fema-has-either-denied-or-not-approved-most-appeals-housing-n891716>.

¹⁰⁶³ Ibid.

order through August 7,¹⁰⁶⁴ and then another extension through September 14, 2018.¹⁰⁶⁵ On September 20, 2018, a federal judge granted the federal government's motion to dismiss the case, agreeing with the defendants' argument that the plaintiffs had failed to allege sufficient facts to prove that FEMA intentionally discriminated against Puerto Ricans in FEMA's response to María.¹⁰⁶⁶

As of September 14, 2018, a total of 592 individuals had concluded travel back to Puerto Rico using the Transportation Assistance. Both the TSA and Transportation programs ended on September 14, for a total federal cost of \$22.6 million.¹⁰⁶⁷

In September 2019, the former Secretary of Puerto Rico's Housing Department said that an estimated 20,000 to 25,000 "blue roofs" remained across the Island.¹⁰⁶⁸ As of July 2020, nearly 27,000 homeowners had applied, and as of the December 2021 Commission briefing, 1,500 homes had been repaired and 199 houses had been rebuilt.¹⁰⁶⁹ In February 2020, it was estimated that between 15,000 to 18,000 families were still living under blue tarps.¹⁰⁷⁰

In March 2019, the HUD OIG office launched an investigation after receiving a congressional request to examine the alleged delays in disbursement of approximately \$20 billion of disaster recovery funds that had been appropriated for Puerto Rico following Hurricanes Irma and María.¹⁰⁷¹ The investigation found several issues that resulted in serious delays in aid reaching the Island. The appropriated funds were intended to reach Puerto Rico in four installments or "tranches" of funding: two for unmet needs for recovery activities (\$1.5 billion and \$8.2 billion, respectively), a third for mitigation efforts (\$8.3 billion), and a fourth to repair the electrical grid (\$1.9 billion).¹⁰⁷²

¹⁰⁶⁴ Mike Schneider, "Puerto Rican evacuees get another extension on housing," *AP News*, Jul. 20, 2018, <https://apnews.com/article/5dd98a7624454d2fb5ea59e92569210b>.

¹⁰⁶⁵ Nicole Acevedo, "Judge gives end date for Puerto Rican hurricane evacuees in FEMA temporary housing," *NBC News*, Aug. 30, 2018, <https://www.nbcnews.com/storyline/puerto-rico-crisis/judge-gives-end-date-puerto-rican-hurricane-evacuees-fema-temporary-n905111>.

¹⁰⁶⁶ Order Dismissing Case, *Asencio v. Federal Emergency Mgmt. Agency*, 4:18-cv-40111, ECF No. 69 (Sept. 20, 2018) (granting Defendants' Motion to Dismiss for the reasons stated in Defendants' memorandum, supporting the motion to dismiss); *See*, Memorandum in Support of Defendants' Motion to Dismiss, *Asencio*, 4:18-cv-40111, ECF No. 66 *2-3, 14-19.

¹⁰⁶⁷ Joint FEMA Statement, at 13.

¹⁰⁶⁸ Danica Coto, "Thousands in Puerto Rico still without housing since María," *Washington Post*, Jul. 24, 2020, https://www.washingtonpost.com/world/the_americas/thousands-in-puerto-rico-still-without-housing-since-maria/2020/07/24/9f79ee6c-cd63-11ea-99b0-8426e26d203b_story.html.

¹⁰⁶⁹ Aubert Statement, at 5.

¹⁰⁷⁰ *Ibid*, at 6.

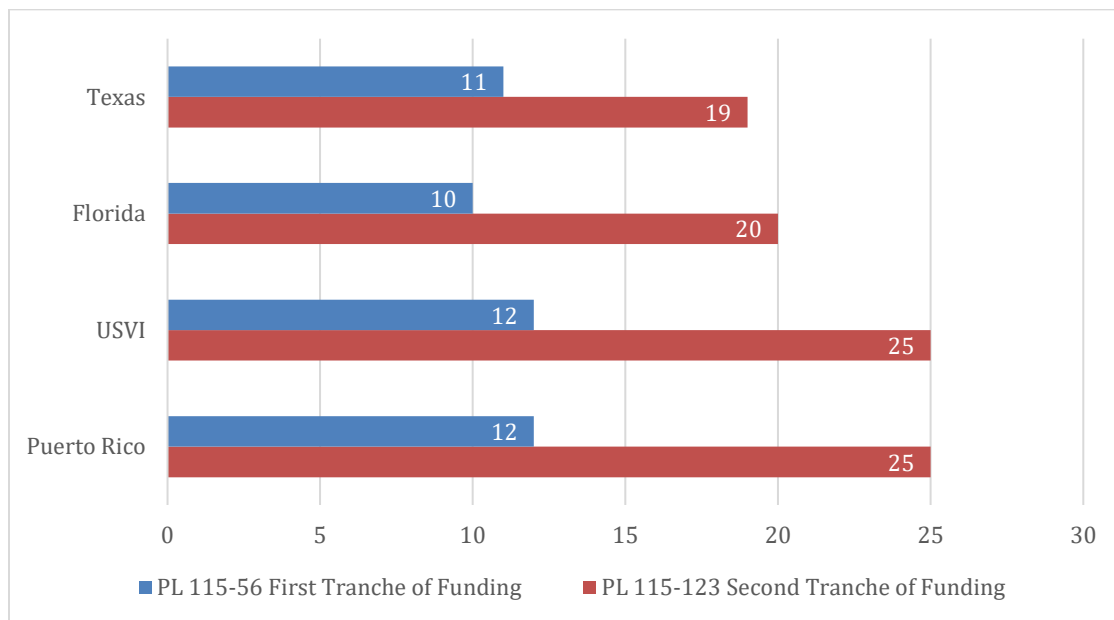
¹⁰⁷¹ HUD OIG, *Review of HUD's Disbursement of Grant Funds Appropriated for Disaster Recovery and Mitigation Activities in Puerto Rico*, Apr. 20, 2021, https://www.hudoig.gov/sites/default/files/2021-04/HUD%20OIG%20Final%20Report_2019SU008945I.pdf.

¹⁰⁷² *Ibid*.

Adi Martínez-Román, Director of Operations at the University of Puerto Rico’s Resiliency Law Center, provided testimony to the Commission explaining that the slowness in which federal agencies dispersed aid to Puerto Rico significantly affected survivors’ recovery. Figure 9 below demonstrates how the delays in the first two tranches of funding had a compounding effect on Puerto Rico’s recovery. She explained to the Commission:

The extreme slowness of recovery has meant the extension of suffering through the years and deepening of the damage caused by the hurricanes. The slowness in spending of CDBG-DR recovery funds in Puerto Rico is attributable to the discrimination that plagued the allocation processes in Washington D.C., the over-centralization of the processes at a territorial level and a complete disregard for the need to plan and implement programs with the help of civil society. First, as reported by the HUD’s Office of the Inspector General, Trump’s administration practically held recovery funds for Puerto Rico hostage by erecting excessive bureaucratic hurdles, and then also obstructed investigation about the hold-up.¹⁰⁷³

Figure 9 Months Elapsed between Congress’ Appropriation and HUD’s Execution of the Grant Agreement



Source: U.S. Department of Housing and Urban Development, Office of Inspector General, Review of HUD’s Disbursement of Grant Funds Appropriated for Disaster Recovery and Mitigation Activities in Puerto Rico, (Apr. 21, 2021),

https://www.hudoig.gov/sites/default/files/202104/HUD%20OIG%20Final%20Report_2019SU008945I.pdf

¹⁰⁷³ Martínez-Román Statement, at 7.

State and local grantees may struggle to administer and oversee disaster recovery funds, as the amount of CDBG-DR funds received after a disaster are often much larger than they typically administer. Following Hurricanes Irma and María, Congress passed three supplemental appropriations acts that included a total of \$35.4 billion in CDBG-DR assistance. Puerto Rico received \$20.2 billion of these funds – or around a fifth of the Island’s total GDP in 2020.¹⁰⁷⁴ Puerto Rico’s inability to distribute CDBG-DR assistance funds, including the COR3 Program, continues to be a source of concern.¹⁰⁷⁵

In June 2021, the Puerto Rican Secretary of Housing explained that of the 20,000 houses that had been qualified for R3, only 1,200 had been completed. By January 2022, 2,430, or 13 percent of qualified applicants have a finished home.¹⁰⁷⁶

According to a HUD Inspector General report, one major impediment was the federal government shutdown that began on December 22, 2018, and lasted until January 25, 2019, which halted all activities, and disbursement of unallocated grant funds.¹⁰⁷⁷ The report stated that HUD’s decision to suspend work on recovery action plans during the shutdown, pursuant to guidance from the Office of Management and Budget (OMB) “resulted in a delay of at least several weeks in HUD’s administration of disaster-relief funds intended for Puerto Rico and several other disaster-grantee jurisdictions.”¹⁰⁷⁸ However, the report also found that HUD’s negotiations with OMB also delayed submitting required notices (e.g., issuing a Federal Register notice) which resulted in a missed deadline of 145 days to begin disbursing funds. HUD officials reacted with frustration to OMB’s written comments on a revised CDBG notice, and during an interview with the OIG, Acting Deputy Secretary Brian Montgomery

said he characterized OMB’s revisions as containing “poison pills” because they would impose unworkable criteria and he was not sure it was “even legal” to insist upon grantees meeting the conditions as a prerequisite to receiving mitigation funding. For example, Montgomery said he did not believe that HUD could coerce Puerto Rico to fix its property-tax system to receive mitigation funding because the property-tax system was not related to mitigation activities. He also indicated that HUD did not put these types of conditions on other disaster-recovery grantees.¹⁰⁷⁹

During this time, HUD also chose to revise its grant-agreement forms which further impacted and delayed the execution of the \$8.2 billion in funding for unmet needs. Lastly, during this time

¹⁰⁷⁴ Yentel Statement, at 14.

¹⁰⁷⁵ Ibid.

¹⁰⁷⁶ Martínez-Román Statement, at 9.

¹⁰⁷⁷ HUD OIG, *Review of HUD’s Disbursement of Grant Funds Appropriated for Disaster Recovery and Mitigation Activities in Puerto Rico*.

¹⁰⁷⁸ Ibid.

¹⁰⁷⁹ Ibid.

HUD's Deputy Secretary resigned from her position; however, the OIG did not find evidence suggesting that her resignation was due to the improper handling or delays of funds to Puerto Rico or undue influence from other government officials.¹⁰⁸⁰ The report concluded that while the OIG did not find evidence of HUD mishandling these funds, it was recommended that HUD improve the clarity and consistency of requirements needed for CDBG programs and streamline its process for administering funds.¹⁰⁸¹

Barriers to Aid and Civil Rights Implications

Nicole Roy, Project Coordinator for the Salvation Army, testified to the barriers that survivors of María suffered since they could not receive aid. She explained that there was a high degree of suicidal ideation among individuals with disabilities and those with mental health concerns since their needs were not being addressed. The lack of electricity was also a public health concern for many survivors:¹⁰⁸²

All [Disaster Recovery Centers] DRCs and [Consolidated Resources Centers] CRCs were in downtown areas of the 78 municipalities, and unfortunately that was not something that was accessible to most people. That was a large logistical concern. The two smaller islands off of Puerto Rico, Culebra and Vieques, were delayed significantly in services and were not able to be treated on equal services as the main island of Puerto Rico.

[Even four years later,] Vieques still is very much behind in what they are able to provide their people in forms of recovery methods. Where mainland Puerto Rico recovered significantly faster, you have rural areas, specifically pocketed rural areas that were more than a year delayed, as well as Vieques, which is a population of almost ten thousand people that are survivors as well.¹⁰⁸³

FEMA reported that the DRC Coordination Team, in collaboration with FEMA's Office of Equal Rights, removed those barriers to make them accessible to people with disabilities.¹⁰⁸⁴ The Civil Rights Notice was published at every facility, and FEMA announced to the media both the process to request reasonable accommodations and the process survivors must follow if they felt that they had been discriminated against.¹⁰⁸⁵ With regard to María, FEMA indicated that they were not aware of any requested accommodations that could not be provided.¹⁰⁸⁶

¹⁰⁸⁰ Ibid.

¹⁰⁸¹ Ibid.

¹⁰⁸² Roy Testimony, *DC Briefing*, p. 96.

¹⁰⁸³ Ibid, at 96-97.

¹⁰⁸⁴ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 34.

¹⁰⁸⁵ Ibid.

¹⁰⁸⁶ Ibid.

María had a significant impact on people with disabilities. Some disaster shelters in Puerto Rico allegedly did not provide sign language interpreters, leaving deaf survivors unable to communicate with anyone in the shelter for up to three weeks.¹⁰⁸⁷ At the Commission’s June briefing, National Council on Disability Chairperson Andrés Gallegos explained that many individuals with disabilities on the Island were already vulnerable¹⁰⁸⁸ due to the limited infrastructure to support their needs prior to the hurricane,¹⁰⁸⁹ and that there was only one fully accessible centralized shelter for people with disabilities on the Island in the storm’s aftermath.¹⁰⁹⁰ According to Center for Disease Control and Prevention (CDC) data, almost 1.2 million adults in Puerto Rico have a disability, representing about 42 percent or 1 in 3 adults,¹⁰⁹¹ with the highest percentage having mobility difficulties (21 percent).¹⁰⁹² It is well-documented that Puerto Rico was economically disadvantaged prior to María and had filed for bankruptcy protection in May 2017, just months prior to the disaster. Almost half (44.4 percent) of the total Island’s population lived below the federal poverty level, which is more than three times the poverty rate on the mainland.¹⁰⁹³ Economic instability was even worse for individuals with disabilities in 2017, with a 53.3 percent poverty rate among working-age individuals.¹⁰⁹⁴ Economic hardship was not the only challenging factor facing Puerto Rico before María. Food insecurity and accessing quality healthcare were also concerns prior to María.¹⁰⁹⁵ Gallegos explained that, taken together these factors:

contributed to a low degree of resiliency in the ability of Puerto Rican residents to [] respond to the effects of the hurricane. Thus, when Puerto Rico was hit by Hurricane María, the effects were magnified for its residents with disabilities.¹⁰⁹⁶

¹⁰⁸⁷ OFF. FOR C.R. AND C.L., DEP’T OF HOMELAND SEC., LISTENING SESSION RECAP, SAN JUAN, PUERTO RICO 4 (May 16, 2018), <https://www.dhs.gov/sites/default/files/publications/Listening%20Session%20Recap%2C%20San%20Juan%2C%20Puerto%20Rico.pdf> (herein Puerto Rico Recap)

¹⁰⁸⁸ Gallegos notes that “vulnerability” in this context is not due to the existence of the disability, but rather due to the “environmental, societal, and political infrastructure on the island.” Gallegos Testimony, *DC Briefing*, p. 89.

¹⁰⁸⁹ Gallegos Testimony, *DC Briefing*, p. 89.

¹⁰⁹⁰ Gallegos Statement, at 5.

¹⁰⁹¹ Disability & Health U.S. Profile Data for Puerto Rico (Adults 18+ years of age), 2019, <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/pdfs/Puerto-Rico-Disability-h.pdf>.

¹⁰⁹² *Ibid.*

¹⁰⁹³ Brian Glassman, “A Third of Movers From Puerto Rico to the Mainland United States Relocated to Florida in 2018,” Census Bureau, Sept. 26, 2019, <https://www.census.gov/library/stories/2019/09/puerto-rico-outmigration-increases-poverty-declines.html>.

¹⁰⁹⁴ Erickson, W., Lee, C., & von Schrader, S., “2017 Disability Status Report: Puerto Rico,” *Cornell University Yang-Tan Institute on Employment and Disability*, (2019), https://www.disabilitystatistics.org/StatusReports/2017-PDF/2017-StatusReport_PR.pdf.

¹⁰⁹⁵ See e.g., RAND Corporation, *Health and Social Services in Puerto Rico Before and After Hurricane María*, 2020, https://www.rand.org/content/dam/rand/pubs/research_reports/RR2600/RR2603/RAND_RR2603.pdf; Gallegos Testimony, *DC Briefing*, p. 91

¹⁰⁹⁶ Gallegos Testimony, *DC Briefing*, p. 92.

He further explained that in the 78 municipalities across the Island, many of the schools that were used as shelters were physically accessible (e.g., had a ramp for wheelchair access) for entrance, but they did not have accessible sleeping areas, showers, medical assistance or supplies, alternative power sources, or sign language interpreters.¹⁰⁹⁷ Gallegos reported that none of the shelters were prepared to address the needs of individuals with intellectual or developmental disabilities.¹⁰⁹⁸

Living without electric service can be life-threatening for people dependent on medical equipment like nebulizers, asthma therapy, dialysis treatment or require refrigerated medication.¹⁰⁹⁹ For others, the lack of essential electric service can make simple everyday tasks like meal preparation, food storage, hygiene, maintenance, commercial transactions, banking, transportation, and many other routine activities very difficult.¹¹⁰⁰

The Commission received testimony indicating that immediately after María, MAVI (a Puerto Rico nonprofit organization advocating for and supporting people with disabilities) began requesting that FEMA provide them with their available data that could assist in identifying survivors with disabilities. The purpose was intended collaboration in providing the most vulnerable with emergency relief and services.¹¹⁰¹ FEMA at first denied the request claiming confidentiality prevented it. At MAVI's insistence, FEMA determined the data could be shared if MAVI entered an MOU with a government agency. MAVI complied, however, FEMA still did not provide the information until six months after the disaster.¹¹⁰²

According to a report from the Partnership for Inclusive Disaster Strategies, even when individuals with disabilities were able to access shelters, many were turned away from both "general" and "special needs shelters" due to "power dependence, personal assistance services requirements, service animals, need for bariatric equipment, mental health conditions, chemical sensitivities, autism and need for support due to cognitive or intellectual disabilities."¹¹⁰³ Moreover, the report found that many individuals with disabilities were "diverted to hospitals or long-term care facilities when they did not need a more restrictive environment but simply needed equal access. Key informants in Puerto Rico reported that hospitals had become de facto shelters for people with disabilities who did not require hospitalization."¹¹⁰⁴

¹⁰⁹⁷ Ibid.

¹⁰⁹⁸ Ibid.

¹⁰⁹⁹ Ruth Santiago, Esq., Comité Dialogo Ambiental, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm'n on Civil Rights, Dec. 10, 2021, at 1-2 (herein Santiago Statement).

¹¹⁰⁰ Santiago Statement, at 2.

¹¹⁰¹ Navarro Statement, at 14.

¹¹⁰² Ibid.

¹¹⁰³ Roth et al., "Getting It Wrong: An Indictment with a Blueprint for Getting It Right."

¹¹⁰⁴ Ibid; *see also, infra* note 1112.

Immediate response efforts were concentrated in a central location within each of the 78 municipalities. To receive any of the supplies or services offered there, people were required to physically get to these locations. Consequently, people with disabilities went without food and water for days and weeks.¹¹⁰⁵ Many people with disabilities lost assistive equipment during the hurricane, and insurance plans denied replacements. FEMA was slow in providing replacements because it required proof of survivors' insurance plan denial.¹¹⁰⁶ Most suppliers of assistive equipment on the Island, however, were not open for business because of their own losses. As a result, many people with disabilities had no wheelchairs, hearing aids, or other assistive devices for their daily living.¹¹⁰⁷ Additionally, Puerto Rico's disabled population is not equally disbursed geographically: there are areas where as much as 100 percent of the population reportedly have a disability, notably in the municipalities of Yauco, Jayuya, and Orocovis - all of which are rural areas.¹¹⁰⁸

Individuals with disabilities in Puerto Rico were also particularly vulnerable to the effects of María due to the failure of the federal government to ensure equitable access to programs such as Supplemental Security Income and the Supplemental Nutrition Assistance Program.¹¹⁰⁹ In the immediate aftermath of María, response efforts concentrated on central locations within each municipality, therefore individuals with disabilities who were unable to travel went without food and water for lengthy periods.¹¹¹⁰ The Commission received testimony that since 2017, poverty rates for persons with disabilities in Puerto Rico have increased by 4.8 percent.¹¹¹¹

The National Council on Disability conducted a focus group in Puerto Rico to delve into understanding the experience of disaster survivors who were institutionalized or threatened with institutionalization, finding that individuals with disabilities were not institutionalized, primarily because institutions were not functioning; and hospitals were also not functioning or were being used for sheltering, leaving patients to be evacuated to the continental U.S. Their focus group found that:

One group of young children who required uninterrupted power for medical devices were evacuated by private air services, coordinated by hospital physicians, to Florida and Texas. When they arrived on the mainland, they learned they were ineligible for hospital admission simply for access to an uninterrupted power source; they had nowhere else to go and at least one parent was threatened with having her child removed from her care and placed in a nursing facility because she (the evacuated parent) was considered

¹¹⁰⁵ Gallegos Statement, at 6.

¹¹⁰⁶ Ibid.

¹¹⁰⁷ Ibid.

¹¹⁰⁸ Bonilla Statement, at 2.

¹¹⁰⁹ Yentel Statement, at 5.

¹¹¹⁰ Ibid.

¹¹¹¹ Bonilla Testimony, *Puerto Rico Briefing*, p. 123.

homeless. Additionally, the parent was advised that their Puerto Rico-issued Medicaid was not portable, and they were not eligible for Florida Medicaid since they did not reside in the state prior to the disaster. To make matters worse, when advocates asked FEMA to assist this family, they were told, during a national stakeholder call, that the family was ineligible for FEMA assistance because they had not evacuated “correctly.”¹¹¹²

Although the Small Business Administration hired staff, it did not fully anticipate the need for Spanish interpretation services in Puerto Rico. The SBA needed additional Spanish translation services to assist the staff in meeting the needs of disaster survivors. As a result, some survivors had estimated wait times of more than 45 minutes or dropped calls.¹¹¹³ FEMA also indicated that they saw barriers to administering relief following María due to their challenge of not having enough bilingual employees to communicate with local residents or having the ability to translate documents into Spanish.¹¹¹⁴ A FEMA mitigation assessment team report concluded that most FEMA publications are provided only in English, and that to aid in the recovery in Puerto Rico, FEMA should consider translating key recovery documents to Spanish.¹¹¹⁵ The Commission also received testimony describing a lack of empathetic and well-trained Spanish speaking staff led to disrespectful treatment during all stages of the recovery process.¹¹¹⁶

Beyond language barriers, the application process was overly complicated and created barriers for survivors. Former San Juan Mayor and Weissman Center Fellow in Leadership, Mount Holyoke College Carmen Yulin Cruz Soto emphasized that there should be clear and consistent instructions provided to survivors. She wrote:

There was also no consistency in the instructions provided to us: one day we were told to use one form, or one system and a few days later we were told to use another form and input the data on another system. A new FEMA employee arrived, and we had to start again for there was no hand off, no knowledge of what happened before, only new instructions with no explanations.¹¹¹⁷

Testimony received also illustrates that a lack of transparency and inadequate descriptions of the FEMA process, non-existent or inadequate translations of FEMA documents, and prolonged

¹¹¹² National Council on Disability, *Preserving Our Freedom: Ending Institutionalization of People with Disabilities During and After Disasters*, May 24, 2019, <https://ncd.gov/publications/2019/preserving-our-freedom>, p. 24.

¹¹¹³ SBA OIG, *Consolidated Results of SBA’s Initial Disaster Assistance Response to Hurricanes Harvey, Irma, and María*, Dec. 22, 2020, p.4, <https://www.sba.gov/sites/default/files/2020-12/SBA%20OIG%20Report%2021-05.pdf>.

¹¹¹⁴ Joint FEMA Statement, at 5.

¹¹¹⁵ FEMA, *Mitigation Assessment Team Report: Hurricanes Irma and María in Puerto Rico*, Oct. 2018, p. 7-12, https://www.fema.gov/sites/default/files/2020-07/mat-report_hurricane-irma-maria-puerto-rico_2.pdf.

¹¹¹⁶ Martínez-Román Statement, at 3-4.

¹¹¹⁷ Cruz Soto Statement, at 3.

outages of internet and phone service led to increased difficulty in applying for assistance.¹¹¹⁸ Further, engagement was often limited because residents were unaware of emergency response, rebuilding, and mitigation plans.¹¹¹⁹ As a result, rumors and misinformation were widespread about what FEMA assistance was available and what survivors were required to do to receive help. While volunteer lawyers and community-based organizations attempted to fill this gap, a lack of clear information further delayed recovery and response efforts.¹¹²⁰ The Commission received testimony from multiple people stating that depending on who answered the phone at FEMA’s hotline, instructions for survivors would vary.¹¹²¹ Many survivors ended up expressing distrust toward FEMA procedures.¹¹²² At the public session of the Puerto Rico briefing, the Commission heard from Juan Medino Camacho, who was told after submitting a contract for aid, that he used the 2020 version, but procedure required the 2014 version.¹¹²³ After months and months of bureaucratic obstacles, by the end of 2021, no progress had been made on the contract.¹¹²⁴ As Medino stated, “[w]hy has nothing happened? Because every time that we submit something, we get asked for something new.”¹¹²⁵

For CDBG-DR grantees, there was a consistent failure to assess the primary languages of impacted communities and failure to provide translation of critical materials.¹¹²⁶ Applicant intake offices often lacked staff translators, and even when translated, they sometimes would provide incorrect information (such as application deadlines).¹¹²⁷ There were reports from people who had never received a single notification on their cases, of project managers being constantly replaced, of non-responsive officers, of people made to sign English-language and/or complicated contracts in 24 hours or less without having a chance to read them carefully or seek legal advice.¹¹²⁸

Identification verification has also shown to be problematic for some disaster survivors. It has been reported that the Puerto Rico Civil Rights Commission received at least five complaints from transgender individuals arguing that FEMA discriminated against them because their name did not match the one appearing on their government records.¹¹²⁹ Ever Padilla Ruiz, a lawyer and Executive Director of the Puerto Rico Civil Rights Commission, indicated that these individuals

¹¹¹⁸ Yentel Statement, at 7; Rivera Statement at 3.

¹¹¹⁹ Yentel Statement, at 9.

¹¹²⁰ *Ibid.*, at 7.

¹¹²¹ Aubert Statement, at 9.

¹¹²² Rivera Statement, at 2.

¹¹²³ Juan Medino Camacho, *Puerto Rico Briefing Public Session*, p. 210.

¹¹²⁴ *Ibid.*, at 211.

¹¹²⁵ *Ibid.*

¹¹²⁶ Yentel Statement, at 16.

¹¹²⁷ *Ibid.*

¹¹²⁸ Aubert Statement, at 15.

¹¹²⁹ Rebecca Banuchi, “Majority of Claimants in Puerto Rico Still Await for Assistance From FEMA, Many Found ‘Ineligible,’” *Centro de Periodismo Investigativo*, Feb. 5, 2018, <https://periodismoinvestigativo.com/2018/02/majority-of-claimants-in-puerto-rico-still-await-for-assistance-from-fema-many-found-ineligible/>; see also Cartagena Statement, at 9.

had their names changed by court decision, yet did not appear in the FEMA database, and that, “[w]hen they search for the Social Security number, another name shows up that is not aligned to their gender identity.”¹¹³⁰ According to FEMA, some Puerto Rico disaster survivors faced challenges in proving identity or property ownership in order to receive Individual Assistance.¹¹³¹ When discrepancies arose in personal identification verification, FEMA indicated that it supported individuals in attempting to verify identity and ownership to provide aid.¹¹³² In Puerto Rico, FEMA stated that it has made changes to standard documentation requirements to accommodate local circumstances and provided funding to various legal organizations to help the survivors with their applications or appeals.¹¹³³

In FEMA Policy 104-009-03, Individuals and Households Program Unified Guidance, published in September 2016, the Identity Verification section listed only one document applicants could provide to verify a name change, which was a marriage license to confirm proof of a “maiden name.” FEMA indicated to the Commission that following the 2017 hurricanes, they have analyzed potential issues with identity verification challenges for disaster survivors, including name change challenges for transgender survivors, when applying for assistance.¹¹³⁴ This analysis revealed that some people with non-traditional names may initially be denied IHP assistance when their names and/or identification documents did not match in the public record automated verification system, as these public records often include an applicant’s pre-transition name and sex.¹¹³⁵ To address this challenge, FEMA clarified its policy related to applicant identity verification in order to be more inclusive to disaster survivors who have had a name change for a variety of reasons.¹¹³⁶ Additional changes to this policy is discussed in Chapter 4.

Additional Issues in the Federal Response to Hurricane María

In the years following Hurricane María, various agencies have examined the federal response to María in Puerto Rico. The DHS OIG conducted an audit in September 2020 to determine the extent to which FEMA managed and distributed commodities in response to Hurricanes Irma and María, and concluded that:

FEMA mismanaged the distribution of commodities in response to Hurricanes Irma and María in Puerto Rico. FEMA lost visibility of about 38 percent of its commodity shipments to Puerto Rico, worth an estimated \$257 million. Commodities successfully delivered to Puerto Rico took an average of 69 days to reach their final destinations.

¹¹³⁰ Banuchi, “Majority of Claimants in Puerto Rico Still Await for Assistance From FEMA, Many Found ‘Ineligible’”; Padilla Ruiz Statement, at 5.

¹¹³¹ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 20.

¹¹³² Ibid.

¹¹³³ Ibid.

¹¹³⁴ Ibid; see FEMA, *Individuals and Households Program Unified Guidance (IHPUG)*, Sept. 30, 2016, p. 4, https://www.fema.gov/sites/default/files/2020-05/IHP_Unified_Guidance_FINAL_09272016_0.pdf.

¹¹³⁵ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 20.

¹¹³⁶ Ibid.

Inadequate FEMA contractor oversight contributed to the lost visibility and delayed commodity shipments. FEMA did not use its Global Positioning System transponders to track commodity shipments, allowed the contractor to break inventory seals, and did not ensure documented proof of commodity deliveries. Given the lost visibility and delayed shipments, FEMA cannot ensure it provided commodities to Puerto Rico disaster survivors as needed to sustain life and alleviate suffering as part of its response and recovery mission.

In addition, FEMA's mismanagement of transportation contracts included multiple contracting violations and policy contraventions. These violations occurred because of poor acquisition planning that did not address requirements for transoceanic shipments. While we understand FEMA's priority on expediting commodity shipments to disaster survivors, their priority overrode the importance of following sound inventory management practices, significantly increasing the potential for fraud, waste, and abuse. Contract costs grew without FEMA having proof that services were performed as required and ultimately led to contract overruns of about \$179 million and at least \$50 million in questioned costs.¹¹³⁷

The report indicated that shipments of water and food experienced average delays of 71 and 59 days, respectively.¹¹³⁸ Of the approximately 97 million liters of water FEMA shipped to Puerto Rico between September 2017 and April 2018, 36 million liters (approximately 37 percent) reached the Regional Staging Areas (RSAs) or Point of Distributions (PODs) for distribution.¹¹³⁹ During the same period, of the 53 million meals FEMA shipped to Puerto Rico, 24 million (approximately 45 percent) reached the RSAs or PODs for distribution.¹¹⁴⁰ The remaining commodity shipments for both water and meals that arrived in the Commonwealth either remained in FEMA's custody, were in contractor facilities, or had unknown destinations.¹¹⁴¹

In a memo responding to the report, FEMA Associate Administrator for Policy and Program Analysis Cynthia Spishak said that over time, the agency compiled an inventory of more meals and water in Puerto Rico than was accepted by the municipalities, and as a result, 5 million meals and 45 million liters of water were not delivered and remained in inventory.¹¹⁴²

¹¹³⁷ DHS OIG, *FEMA Mismanaged the Commodity Distribution Process in Response to Hurricanes Irma and María*, Sept. 25, 2020, p. 5 (internal citations omitted), <https://www.oig.dhs.gov/sites/default/files/assets/2020-09/OIG-20-76-Sep20.pdf>.

¹¹³⁸ *Ibid.*, at 8.

¹¹³⁹ *Ibid.*

¹¹⁴⁰ *Ibid.*

¹¹⁴¹ *Ibid.*

¹¹⁴² *Ibid.*, at 32; Quinn Owen and Joshua Hoyos, "FEMA lost track of over a quarter-billion dollars in supplies intended for Puerto Rican hurricane relief: Report," *ABC News*, Oct. 1, 2020, <https://abcnews.go.com/Politics/fema-lost-track-quarter-billion-dollars-supplies-intended/story?id=73371292>.

The OIG report provided five recommendations, of which FEMA concurred with four, disagreeing with the conclusions concerning commodity distribution.¹¹⁴³ According to FEMA, its reconciliation resulted in accounting for all but 19 of 9,775 containers shipped to Puerto Rico. The report stated that it took FEMA several months to locate these containers throughout the Island, and it acknowledged some were empty or were filled with different products than expected.¹¹⁴⁴ Finding lost containers, however, does not mean FEMA found the commodities which were originally packed in the containers. The number of commodities that FEMA lost because of its mismanagement of the distribution process is undeterminable.¹¹⁴⁵

As discussed in Chapter 1, Puerto Rico was already facing a difficult financial situation prior to the 2017 hurricane season.¹¹⁴⁶ In May 2021, GAO reported that this fiscal condition made it difficult for Puerto Rico agencies to access funds to start construction of Public Assistance (PA) projects.¹¹⁴⁷ Because PA is a reimbursement program, agencies must generally provide the initial funding for the work and seek reimbursements afterward.¹¹⁴⁸ As of January 2021, the territory had spent \$4.7 billion of the \$23.8 billion obligated,¹¹⁴⁹ with only \$158 million spent for long-term rebuilding projects such as schools, the power grid, and water systems.¹¹⁵⁰ The 2021 GAO report stated that:

While FEMA's changes to the Public Assistance program in Puerto Rico have contributed to an increase in obligations in recent months, many steps remain to develop, obligate funding for, and start construction of Public Assistance projects for Puerto Rico's recovery. For example, in addition to the almost 6,500 projects already obligated, FEMA and Puerto Rico are working to develop and obligate about 6,100 more Public Assistance projects to address damages from these disasters. FEMA estimates it will obligate an additional \$9.2 billion for these projects. However, this amount is likely to increase as projects are developed and costs are estimated.¹¹⁵¹

The report explains that in March 2019, FEMA instituted additional internal controls to ensure proper use and management of projects funded under the PA program.¹¹⁵² For fiscal year 2018,

¹¹⁴³ DHS OIG, *FEMA Mismanaged the Commodity Distribution Process in Response to Hurricanes Irma and María*, p. 21.

¹¹⁴⁴ *Ibid.*

¹¹⁴⁵ *Ibid.*

¹¹⁴⁶ *See, supra* notes 153-179.

¹¹⁴⁷ GAO, *Puerto Rico Recovery: FEMA Made Progress in Approving Projects, But Should Identify and Assess Risks to the Recovery*.

¹¹⁴⁸ *Ibid.*

¹¹⁴⁹ The number of funds obligated were as of January 15, 2021; the higher number of PA funding obligated reported in this report is from June 2021.

¹¹⁵⁰ GAO, *Puerto Rico Recovery: FEMA Made Progress in Approving Projects, But Should Identify and Assess Risks to the Recovery*; *see also* Currie Statement, at 5.

¹¹⁵¹ GAO, *Puerto Rico Recovery: FEMA Made Progress in Approving Projects, But Should Identify and Assess Risks to the Recovery*, p. 24.

¹¹⁵² *Ibid.*, at 23-24.

FEMA selected a sample of 155 award expenditures for Hurricanes Irma and María in Puerto Rico for \$1.7 billion, which constituted about 93 percent of expenditures during the year, to go through this process. As of February 2021, the review was completed and resulted in FEMA issuing a letter with initial findings to Puerto Rico identifying \$243 million in improper funding to be recovered.¹¹⁵³ For fiscal year 2019, FEMA selected a sample of 267 award expenditures in Puerto Rico totaling about \$2 billion for testing, which constituted about 91 percent of expenditures for the year, according to FEMA officials. The testing for fiscal year 2019 was temporarily paused in March 2020 due to COVID-19, and testing activities have resumed as of December 2020.¹¹⁵⁴

The GAO report also stated that although the number of Public Assistance projects developed and obligated for Puerto Rico's recovery has increased, FEMA has not comprehensively identified or assessed the risks that could affect the success of the remainder of the recovery, or identified potential actions to manage them.¹¹⁵⁵ FEMA and Puerto Rico officials said that subrecipients' staff lack the expertise to develop projects for obligation, which could result in the need for additional coordination with FEMA officials or require subrecipients to hire contractors. This could result in a further delay of the process – potentially affecting projects being developed by PREPA, Aqueduct and Sewer Authority, and the Department of Education under the accelerated award strategy, which has been obligated and must be completed within 5 years.¹¹⁵⁶ Additionally, FEMA officials said that some subrecipients were unclear about how to leverage PA funds for mitigation efforts using alternative procedures or the Hazard Mitigation Grant Program. A lack of understanding of the program could present risks to subrecipients' ability to incorporate mitigation as they continue developing projects, and ultimately to their ability to rebuild to ensure resilience to future disasters.¹¹⁵⁷

In August 2021, the Department of Homeland Security Office of Inspector General published a report following an audit conducted to determine the extent to which FEMA's use of its Strategic Funds Management (SFM) initiative ensured that funds were obligated in accordance with requirements.¹¹⁵⁸ The report found that FEMA did not ensure PA funds were obligated in accordance with Federal, Department, and component requirements because it obligated PA funds to projects it should have incrementally funded under SFM.¹¹⁵⁹ Additionally, it found that FEMA did not provide adequate oversight of the Regions in implementing SFM, and did not have documentation to support SFM determination.¹¹⁶⁰ Two recommendations were provided

¹¹⁵³ Ibid, at 24.

¹¹⁵⁴ Ibid.

¹¹⁵⁵ Ibid, at 32.

¹¹⁵⁶ Ibid.

¹¹⁵⁷ Ibid, at 32-33.

¹¹⁵⁸ DHS OIG, *FEMA Prematurely Obligated \$478 Million in Public Assistance Funds from FY 2017 through FY 2019*, Aug. 17, 2021, <https://www.oig.dhs.gov/sites/default/files/assets/2021-08/OIG-21-54-Aug21.pdf>.

¹¹⁵⁹ Ibid, at 5.

¹¹⁶⁰ Ibid, at 6-7.

relating to updating the standard operating procedure and developing a mechanism to ensure monitoring of implementation of the SFM Initiative in accordance with policy; FEMA concurred with both recommendations.¹¹⁶¹

The GAO notified HUD that it intends to review the type of disaster assistance needed among the various demographic groups, and GAO's findings should influence future HUD policy on administering assistance to at-risk and protected populations.¹¹⁶² Stephen M. Begg, Deputy Inspector General of HUD, stated in his written testimony to the Commission:

OIG has raised concerns that citizens who apply for disaster recovery assistance encounter a convoluted process and face substantial difficulties, depending on how, when, and where they submit a request for Federal assistance. People may experience lengthy delays between the initial application process and the closing of their application or case due to inconsistent communication, coordination, and collaboration between HUD and the grantees.

Applicants may also experience delays in funding, receive duplicative benefits, and experience other challenges after the application process for disaster grant funds is completed. OIG suggested that HUD improve communication, coordination, and collaboration among nonprofits and volunteers, as well as Federal and State agencies with disaster-related roles, before the next disaster occurs. OIG has also suggested that HUD document any challenges reported by citizens to prepare for future disasters.¹¹⁶³

Veronica Chapa Gorczynski, President of the East End District, posited that the federal government should strive for a "housing-first" model.¹¹⁶⁴ She explained that

with the increasing number of storm events with costs at over a billion dollars, we should consider planning for the percentage of the population who will not return to their homes. We need real-time, accurate data of where housing is available and a process to access those housing units. We need to consider long-term solutions for special populations including citizens with disabilities and the elderly. We need to determine a way to provide rent, security deposits, and utility deposits earlier to help families start their recovery more quickly. Finally, we need to work with landlords on releasing families out of their leases, if the unit is not safe and sanitary; and pay landlords more quickly for those units that are ready to accept families. Moving people from shelters to hotels (or trailers), to

¹¹⁶¹ Ibid, at 9.

¹¹⁶² Begg Statement, at 3.

¹¹⁶³ Ibid.

¹¹⁶⁴ Gorczynski Statement, at 3.

apartments or other rental units, is an expensive process that incurs additional costs, including slowing recovery for families.¹¹⁶⁵

Federal statute, regulation, and HUD Federal Register notices require that activities and programs funded through the Community Development Act of 1964 operate in ways that “affirmatively further fair housing.”¹¹⁶⁶ HUD CDBG-DR Federal Register notices have specifically required that the grantee

certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the state, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.¹¹⁶⁷

According to testimony received by the Commission, HUD has underenforced these laws and regulations for decades.¹¹⁶⁸

Specifically, President and CEO of the National Low Income Housing Coalition, Diane Yentel explained in her written statement to the Commission that the

current top-down, non-participatory nature of CDBG-DR action plan development allows HUD and grantees to ignore fair housing considerations. HUD often approves CDBG-DR action plans that have violations of civil rights law built into their structure. Plans have been approved that provide assistance to homeowners based upon discriminatory property values, that underassess the number of renters affected by a disaster, or that favor homeowners.¹¹⁶⁹

Ongoing Rebuilding Efforts

The response to María posed some specific challenges, such as FEMA encountering significant hurdles in coordinating and moving resources to the Island due to the geographic distance from the continental mainland, as well as challenging conditions on the ground.¹¹⁷⁰ According to FEMA:

The conditions in Puerto Rico following Hurricane María required FEMA to deviate from the logistics model for commodity delivery and distribution. Initially, FEMA faced

¹¹⁶⁵ Ibid, at 3.

¹¹⁶⁶ Yentel Statement, at 17.

¹¹⁶⁷ 71 Fed. Reg.7671 (Feb. 13, 2006); 78 Fed. Reg.14347 (Mar. 5, 2013); *see also*, Yentel Statement, at 17.

¹¹⁶⁸ Yentel Statement, at 17.

¹¹⁶⁹ Ibid.

¹¹⁷⁰ Joint FEMA Statement, at 7.

challenges in moving commodities from ports to other locations. Between the limited FEMA logistics personnel on the island and local contractors—who were also disaster survivors — the Agency could not find enough truck drivers to transport commodities. This issue, coupled with impassable roads, caused delivery delays.

FEMA found alternative methods to facilitate commodity delivery that included working extensively with other Federal partners on island to move food and water to Puerto Rico Regional Staging Areas (RSAs). At the RSAs, commodities were turned over to the Puerto Rico State Guard for further coordination with, and distribution to, the 78 Puerto Rico municipalities. FEMA also partnered with DoD to air drop commodities to isolated communities as early as three days post-Hurricane María landfall.¹¹⁷¹

Due to these challenges, much of the Island’s recovery came from nonprofit associations, foundations, and local community workers.¹¹⁷² Survivors also developed their own new community nonprofits to spearhead recovery efforts, seeking funding and resources needed to rebuild.¹¹⁷³ The Association of United Communities Taking Solidarity Action, better known by their Spanish acronym Acutas, informally started days after María, and one year later was formally incorporated as a nonprofit.¹¹⁷⁴

Rebuilding has increased the interest in the Island’s electrical grid and overall energy issues. The Commission received testimony from Adi Martínez-Román of the University of Puerto Rico Law School regarding intermittent electrical service and blackout periods taking place due to the inefficiency of the new electrical grid operator, LUMA Energy:¹¹⁷⁵

Despite being paid more than 140 million dollars to finance the transition before the contract took effect on June 1st, 2021, LUMA’s lack of planning has resulted in major blackouts that have affected more than 900,000 clients, interruptions of critical electricity service in hospitals, residences, damage to public and commercial equipment, and even fires.¹¹⁷⁶

¹¹⁷¹ Ibid.

¹¹⁷² See, *infra* notes 1353-1371; Nicole Acevedo, “Puerto Rico sees more pain and little progress three years after Hurricane María,” *NBC News*, Sept. 20, 2020, <https://www.nbcnews.com/news/latino/puerto-rico-sees-more-pain-little-progress-three-years-after-n1240513>.

¹¹⁷³ Nicole Acevedo, “Amid government mess, Hurricane María survivors lack access to philanthropic aid,” *NBC News*, Sept. 19, 2019, <https://www.nbcnews.com/news/latino/amid-government-mess-hurricane-maria-survivors-lack-access-philanthropic-aid-n1056221>.

¹¹⁷⁴ Ibid.

¹¹⁷⁵ LUMA took over Puerto Rico’s utility service from PREPA in June 2021 under a 15-year contract. See Associated Press, “In Puerto Rico, private company takes over power utility service,” *NBC News*, Jun. 2, 2021, <https://www.nbcnews.com/news/latino/puerto-rico-private-company-takes-power-utility-service-rcna1091>.

¹¹⁷⁶ Martínez-Román Statement, at 13.

According to testimony by Ruth Santiago, Esquire of Comité Dialogo Ambiental, the Governor, and the Puerto Rico Energy Bureau have asked FEMA to disburse the \$9.6 billion that has been allocated for the electric system in order to rebuild the centralized transmission and distribution grid, and add new methane gas-fired, import-dependent plants.¹¹⁷⁷ In contrast, civil society proposals put forward by community, environmental, labor and professional organizations, academia, and religious congregations are calling on FEMA to invest in renewable energy, primarily on-site or rooftop solar and battery energy storage systems.¹¹⁷⁸ Santiago asserts that the proposed transformation of the electric system would alleviate the load on poor and largely Afro-descendent communities.¹¹⁷⁹

Multiple studies have shown the viability, reliability, and economic benefits of rooftop solar and storage in Puerto Rico, yet currently, only higher-income individuals are seeing an increase in the number of rooftop solar and storage installations.¹¹⁸⁰ The Commission received testimony arguing that “one of the best ways for Puerto Rico to build a robust, resilient, efficient, and climate smart energy infrastructure is through the installation of decentralized, rooftop solar energy systems with battery storage.”¹¹⁸¹

Another issue in the rebuilding process involves the roads and bridges throughout the territory. Carlos Pesquera, former Secretary of Transportation and Public Works in Puerto Rico, explained that the Bipartisan Budget Act of 2018¹¹⁸² established a mandate for FEMA to replace or restore the function of a facility or system to industry standards.¹¹⁸³ However, the definition of critical facilities was not part of the legislation, so “FEMA went ahead and made its own interpretation of critical facilities.”¹¹⁸⁴ Critical facilities are only mentioned in the Stafford Act in relation to private nonprofit facilities, with no mention of roads or bridges since nonprofits do not work on them.¹¹⁸⁵ This essentially led to FEMA not recognizing the Puerto Rican transportation infrastructure as a critical facility.¹¹⁸⁶ Pesquera suggested that FEMA modify its policy to include transportation as a critical facility.¹¹⁸⁷

¹¹⁷⁷ Santiago Statement, at 2.

¹¹⁷⁸ *Ibid.*, at 3.

¹¹⁷⁹ *Ibid.*

¹¹⁸⁰ *Ibid.*, at 3 and 12.

¹¹⁸¹ Navarro Statement, at 14.

¹¹⁸² *See, supra* note 494.

¹¹⁸³ Carlos Ignacio Pequera Morales, former Secretary of Transportation and Public Works, Puerto Rico, *Puerto Rico Briefing Public Session*, p. 197-198.

¹¹⁸⁴ *Ibid.*, at 198.

¹¹⁸⁵ *Ibid.*

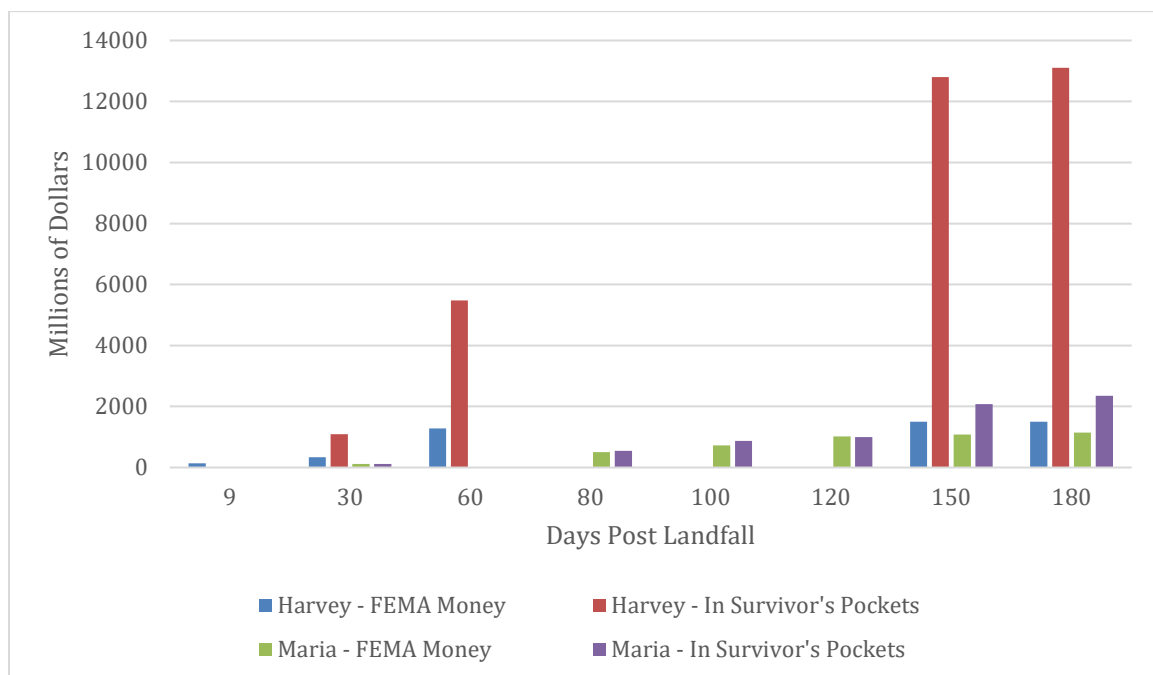
¹¹⁸⁶ *Ibid.*

¹¹⁸⁷ *Ibid.*, at 200.

Comparison of Federal Response Across Storms

Research has pointed to federal spending timelines and other measures to conclude that from storm landfall through six months after landfall, the disaster response to Harvey in Texas was on a larger scale and faster than the response to María in Puerto Rico.¹¹⁸⁸ Data show that within the first nine days after landfall, Harvey survivors received over \$100 million in FEMA dollars, while María survivors received slightly over \$6 million in aid.¹¹⁸⁹ Moreover, while survivors of Harvey received \$1.28 billion in aid within two months after the landfall, María survivors waited four months before receiving \$1 billion in aid after landfall.¹¹⁹⁰ These trends also hold for total federal dollars received by survivors (see Figure 10 below).

Figure 10 Cumulative Federal Dollars Distributed Post-Landfall



Note: Cumulative dollars are scaled in millions; thus \$5480 million is equal to \$5.48 billion “FEMA Money” refers to FEMA assistance to individuals and families, which includes applications by individuals currently residing in the U.S. post-María and individuals in Puerto Rico. “In Survivor’s Pockets” refers to the total amount of federal aid to survivors, which includes FEMA’s aid to individuals and families, SBA loans, and National Flood Insurance payouts.

Source: Charley Willison, Phillip Singer, Melissa Creary, Scott Greer, “Quantifying inequities in US federal response to hurricane disaster in Texas and Florida compared with Puerto Rico,” *BMJ Global Health*, 2019.

¹¹⁸⁸ Charley E. Willison, Phillip M. Singer, Melissa S. Creary, and Scott L. Greer, “Quantifying inequities in US federal response to hurricane disaster in Texas and Florida compared with Puerto Rico,” *BMJ Global Health*, 4(1): 2019, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6350743/>.

¹¹⁸⁹ Ibid.

¹¹⁹⁰ Ibid.

The Commission heard testimony indicating that in the immediate aftermath of the storm, FEMA had received over 1.1 million IA applications in Puerto Rico and had denied nearly 60 percent,¹¹⁹¹ which represents twice the denial rate in Texas after Harvey.¹¹⁹² Additionally, as noted in a statement to NBC News on July 12, 2018, a FEMA spokesperson said that of more than 43,000 appealed cases from survivors of María in Puerto Rico, more than 7,500 had been approved (17 percent), and more than 34,000 (79 percent) had been deemed ineligible.¹¹⁹³ FEMA indicated that the complaint that 60 percent had been rejected was misleading, as some rejected applicants had received loans from SBA or aid from other agencies.¹¹⁹⁴ As of May 1, 2018, FEMA reported receiving 1,118,862 registrations for assistance from María survivors, and the number approved was 452,290, and the number deemed ineligible was 335,748.¹¹⁹⁵ These numbers amount to approximately 40 percent approved and 30 percent ineligible, with the remaining 30 percent unaccounted for. Discussion of the need for data transparency is included in Chapter 4.

FEMA provides a fact sheet of the common reasons a survivor might be found ineligible for disaster assistance,¹¹⁹⁶ provided below in Table 7.

Table 7 Reasons for FEMA Ineligibility

Reason	Description
1. You are insured	FEMA cannot pay for damage covered by insurance.
2. Your insurance company denies your claim	Survivors must provide documentation that identifies the denial or exclusions of their insurance settlement before FEMA will consider assistance eligibility.
3. You reported no damage when registering with FEMA	If a survivor reported their home had no damage but later discovered it's not habitable anymore.

¹¹⁹¹ Aubert Statement, at 4.

¹¹⁹² Yentel Statement, at 2.

¹¹⁹³ Nicole Acevedo, "FEMA has either denied or not approved most appeals for housing aid in Puerto Rico," *NBC News*, Jul. 17, 2018, <https://www.nbcnews.com/storyline/puerto-rico-crisis/fema-has-either-denied-or-not-approved-most-appeals-housing-n891716>; Aubert Statement, at 4.

¹¹⁹⁴ Matthew Goldstein, "Puerto Rico's Positive Business Slogans Can't Keep the Lights On," *The New York Times*, Mar. 5, 2018, <https://www.nytimes.com/2018/03/05/business/puerto-rico-business-maria.html>.

¹¹⁹⁵ Acevedo and Pacheco, "No deeds, no aid to rebuild homes: Puerto Rico's reconstruction challenge."

¹¹⁹⁶ FEMA, "Reasons Why You Might Have Been Found Ineligible by FEMA," Released Sept. 9, 2020, <https://www.fema.gov/fact-sheet/reasons-why-you-might-have-been-found-ineligible-fema>; FEMA, "Common Reasons for a FEMA Ineligibility Decision," Dec. 14, 2021, <https://www.fema.gov/fact-sheet/common-reasons-fema-ineligibility-decision>.

4. Home is safe to occupy/insufficient damage	FEMA housing assistance only covers costs to make the home habitable, or there was insufficient storm-caused damage to the home.
5. Proof of ownership/ proof of occupancy	FEMA requires proof of occupancy from disaster survivors who apply for federal assistance to help them with repairs to their damaged homes. FEMA verifies occupancy by means of automated public and government records or by using documents submitted with the application.
6. FEMA could not verify identity	FEMA must be able to verify identity with a valid Social Security number.
7. No initial rental assistance	If a survivor indicates to an inspector they are not willing to move while the damaged home was being repaired, making them ineligible for temporary rental assistance.
8. The damaged home may not be the primary residence	FEMA will not consider more than one primary residence for a survivor and his/her spouse. FEMA defines a primary residence as the place where you live for more than six months of the year.
9. A FEMA inspector was unable to reach a survivor, or a survivor failed to meet with the inspector	Survivors must return FEMA calls in a timely fashion, and survivors or a representative must be present at any appointments with FEMA officials.

Of the nine reasons listed, the Commission received the most testimony surrounding items 4, 5, 6, and 9. Regarding the “Home Safe to Occupy” reason, the Commission received testimony about a standard denial letter not including facts about what the inspector viewed or deemed to be disaster-related damage, leaving applicants unsure as to what made them ineligible.¹¹⁹⁷ Additionally, the Commission received a public comment arguing that the “One Size Fits All” habitability standard is built on the faulty assumption that what is safe to occupy for one is safe to occupy for all, particularly for survivors with disabilities or certain medical conditions.¹¹⁹⁸

Lack of proof of ownership or occupancy was an extremely common reason brought to the Commission regarding a FEMA denial. As many as 55 percent of homeowners in Puerto Rico did not hold a title at the time of María,¹¹⁹⁹ and at least 77,000 applicants were denied due to title documentation issues,¹²⁰⁰ despite nothing in Puerto Rico’s laws or regulations requiring homeowners to register their properties.¹²⁰¹ In Texas, families were denied assistance due to

¹¹⁹⁷ Perrigue Gomez Statement, at 6.

¹¹⁹⁸ Stephanie Duke, Public Comment, Nov. 22, 2021 [on file].

¹¹⁹⁹ See, *supra* note 188; see also Navarro Statement, at 9.

¹²⁰⁰ Yentel Statement, at 6; see also Aubert Statement, at 9.

¹²⁰¹ Aubert Statement, at 9.

heirship reasons, and many did not have the resources to secure the legal assistance needed to go through probate court or create wills needed to have single person ownership.”¹²⁰² Regarding identity verification, the Puerto Rico Civil Rights Commission received at least five complaints from transgender individuals arguing that FEMA discriminated against them because their name did not match the one appearing on their government records.¹²⁰³ Finally, following María, many survivors lacked telephone and/or internet access or had evacuated the Island which made it difficult to schedule or follow through with the required property inspections to receive assistance from FEMA.¹²⁰⁴

Table 8 below provides information regarding the number of registrations FEMA received for each storm as of June 15, 2021, the number of referrals and eligibility numbers for both the IHP and HA programs, as well as information regarding rentals. Additionally, FEMA provided direct housing to 3,514 for Harvey, and 408 for María.

Table 8 FEMA IHP and HA Program Summaries for Harvey and María (Puerto Rico)

	Regs	Valid Regs	IHP Referrals	IHP Eligible	IHP Avg \$	HA Referrals	HA Eligible	HA Avg \$	Rentals Paid	Rental Avg \$	Direct Housing
Hurricane Harvey	895,636	890,938	740,541	373,150	\$4,440	619,781	172,586	\$7,203.67	143,557	\$6,461	3,514
Hurricane María	1,122,627	1,120,770	894,514	475,314	\$2,812	746,986	231,245	\$3,321	147,022	\$2,956	408

Source: FEMA Supplemental Testimony, data as of June 15, 2021

As discussed above, in response to Harvey’s landfall, FEMA approved over \$1.6 billion (\$1,656,898,380.50) total in IHP assistance that includes a total of approximately \$400 million (\$413,645,530.30) for post-Harvey assistance. FEMA approved 373,150 applications for individual assistance, which results in a mean amount awarded of \$4,440.30.¹²⁰⁵

FEMA also obligated over \$1.2 billion (\$1,289,824,129.75) for emergency work in response to Harvey, almost \$900 million (\$894,162,695.85) for permanent work, and approximately \$287 million (\$287,075,216.54) for hazard mitigation assistance, and for a total of over \$2.3 billion

¹²⁰² Hirsch Statement, at 3.

¹²⁰³ Banuchi, “Majority of Claimants in Puerto Rico Still Await for Assistance From FEMA, Many Found ‘Ineligible’.”; *see also* Cartagena Statement, at 9.

¹²⁰⁴ Ivis García, “Deemed Ineligible: Reasons Homeowners in Puerto Rico Were Deemed Aid After Hurricane María,” *Housing Policy Debate*, Apr. 2021, https://nlihc.org/sites/default/files/Deemed_Ineligible_Garcia_2021.pdf.

¹²⁰⁵ FEMA Supplemental Testimony, data as of June 15, 2021

(\$2,362,663,802.26) in public assistance grants. This gives a total of \$4,306,637,399.30 in obligated funds awarded post-Harvey.¹²⁰⁶

In comparison, in response to María's landfall, FEMA approved over \$1.3 billion (\$1,336,691,217.55) total in IHP assistance that includes a total of over \$560 million (\$568,621,679.14) for other needs assistance post-María. FEMA approved 475,313 applications for individual assistance, which results in a mean individual assistance amount of \$2,812.23.

FEMA also obligated over \$5.2 billion (\$5,240,988,276.12) for emergency work in response to María, approximately \$18.1 billion (\$18,167,160,951.70) for permanent work, and \$94.3 million (\$94,309,461.31) for hazard mitigation assistance. For a total of over \$24.2 billion (\$24,244,969,839.44) in public assistance grants. This gives a total of \$25,675,970,518.30 in obligated funds awarded post-María.¹²⁰⁷ See Table 9 below for a comparison of FEMA's funding obligations across both hurricanes.

Table 9 FEMA Funding Obligations (as of 2021)

	Harvey	María
Total Housing Assistance	\$1,243,252,850.20	\$768,069,538.41
Total Other Needs Assistance	\$413,645,530.30	\$568,621,679.14
Total IHP Dollars Approved	\$1,656,898,380.50	\$1,336,691,217.55
Emergency Work Dollars Obligated	\$1,289,824,129.75	\$5,240,988,276.12
Permanent Work Dollars Obligated	\$894,162,695.85	\$18,167,160,951.70
Total PA Grant Dollars Obligated	\$2,506,341,969.53	\$27,571,380,708.69
Hazard Mitigation Grant Program Dollars Obligated	\$287,075,216.54	\$94,309,461.31

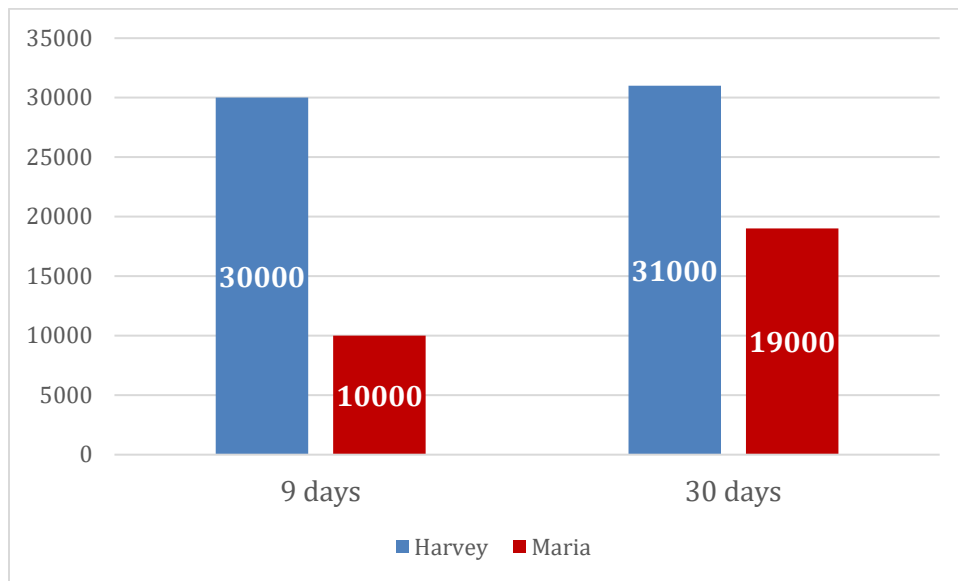
Source: Texas Hurricane Harvey (DR-4332-TX); Puerto Rico Hurricane María (DR-4339-PR); FEMA Statement, at 3. Table created by Commission staff.

¹²⁰⁶ Texas Hurricane Harvey (DR-4332-TX); Puerto Rico Hurricane María (DR-4339-PR); Joint FEMA Statement at 3.

¹²⁰⁷ Joint FEMA Statement at 3.

Moreover, aid was available to Harvey survivors more swiftly after the hurricane struck, since FEMA had already pre-positioned supplies and personnel in Texas in preparation for the storm, whereas the agency did not have advance planning in place in Puerto Rico despite the Island already suffering effects from Hurricane Irma.¹²⁰⁸ FEMA dispatched its employees, along with the National Guard, within nine days of landfall for both hurricanes.¹²⁰⁹ Thirty thousand federal employees were dispatched to Texas, compared to 10,000 in Puerto Rico.¹²¹⁰ One month after landfall, at the peak of FEMA's aid efforts, 31,000 federal employees were dispatched to Texas, while 19,000 were dispatched to Puerto Rico.¹²¹¹

Figure 11 Total Federal Personnel On-Site (Days Post-Landfall)



Source: Nicole Einbinder, “How the Response to Hurricane María Compared to Harvey and Irma,” PBS Frontline, May 1, 2018, <https://www.pbs.org/wgbh/frontline/article/how-the-response-to-hurricane-Maria-compared-to-harvey-and-irma/>.

Key emergency supplies were already in short supply in Puerto Rico before María hit, and in the immediate response, inventories of basic provisions including food, water, and tarps were lower than in Texas following Harvey.¹²¹² In Puerto Rico, the need for tarps was especially severe. With nearly half a million homes damaged or destroyed, FEMA needed hundreds of thousands

¹²⁰⁸ See e.g., FEMA, “Historic Disaster Response to Hurricane Harvey in Texas,” Sept. 22, 2017, <https://www.fema.gov/press-release/20210318/historic-disaster-response-hurricane-harvey-texas>; Willison et al., “Quantifying inequities in US federal response to hurricane disaster in Texas and Florida compared with Puerto Rico.”; RAND, *Hurricanes Irma and María: Impact and Aftermath*.

¹²⁰⁹ Willison et al. “Quantifying inequities in US federal response to hurricane disaster in Texas and Florida compared with Puerto Rico.”

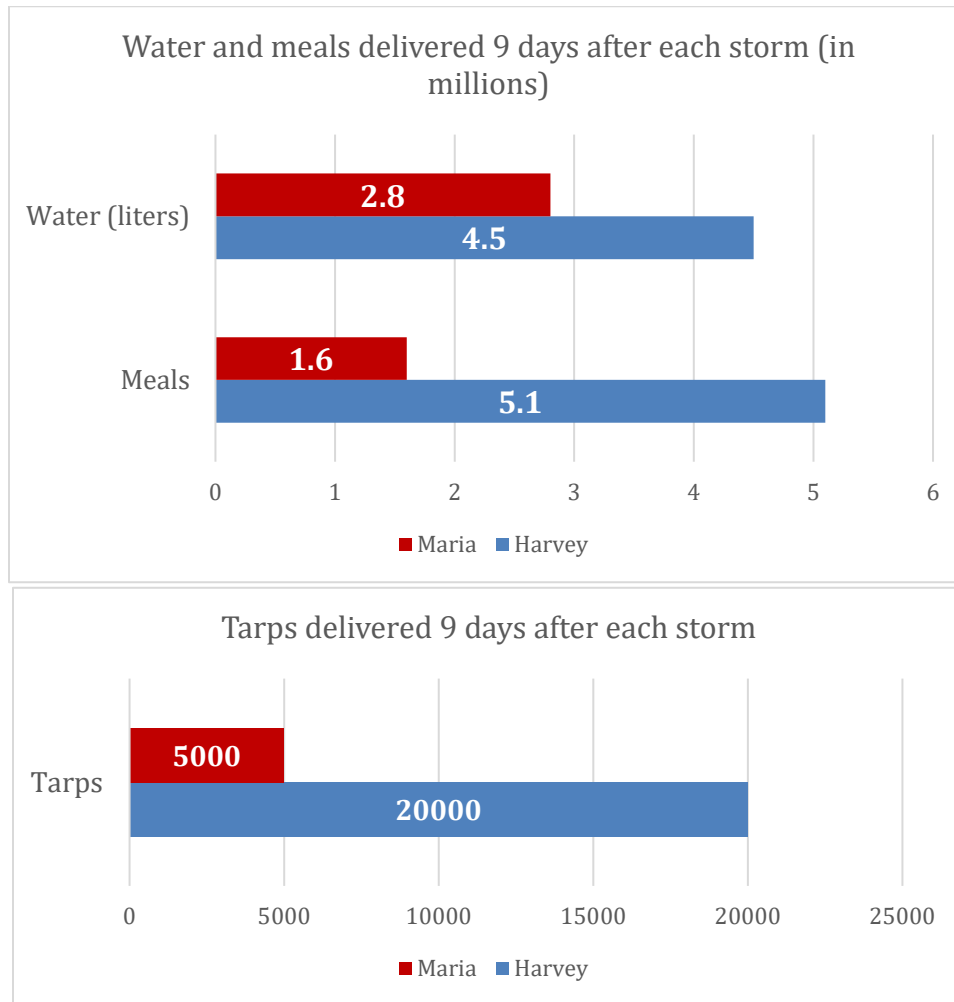
¹²¹⁰ Ibid.

¹²¹¹ Ibid.

¹²¹² Nicole Einbinder, “How the Response to Hurricane María Compared to Harvey and Irma,” *PBS Frontline*, May 1, 2018, <https://www.pbs.org/wgbh/frontline/article/how-the-response-to-hurricane-maria-compared-to-harvey-and-irma/>.

of tarps, yet just 5,000 were delivered nine days after María hit—four times fewer than after Harvey.¹²¹³ Figure 12 provides the immediate response of supplies delivered nine days after each storm.

Figure 12 Supplies Delivered 9 Days After Each Storm



Source: Nicole Einbinder, "How the Response to Hurricane María Compared to Harvey and Irma," PBS Frontline, May 1, 2018, <https://www.pbs.org/wgbh/frontline/article/how-the-response-to-hurricane-María-compared-to-harvey-and-irma/>.

FEMA procured and delivered over \$62.8 million of shelf stable meals from October 2017 through February 2018 to meet short-term feeding shortfalls, in addition to meals and snacks provided by volunteer organizations.¹²¹⁴ Meals provided to Puerto Rico following María received national attention as images of chips and candy bars provided by FEMA made their way

¹²¹³ Ibid.

¹²¹⁴ FEMA Responses to U.S. Commission on Civil Rights Interrogatories, Aug. 13, 2021, at 45.

across social media.¹²¹⁵ For instance, former San Juan Mayor Carmen Yulín Cruz Soto and Executive Director of Ayuda Legal Ariadna Michelle Godreau Aubert explained that disaster survivors were given foods high in fat, sugar, and salt as part of the food relief aid,¹²¹⁶ and that the food distributed by FEMA about three weeks after the crisis began included one applesauce snack pack, one Jack Links beef jerky, one Baby Ruth chocolate bar, one Pringles chips snack pack, and one pudding snack pack.¹²¹⁷ Nutritional guidelines set by the United States Department of Health and Human Services and the United States Department of Agriculture, indicate a healthy diet should include vegetables, fruits, grains, low or non-fat dairy, and a variety of protein foods, including seafood, lean meats and poultry, eggs, beans and peas, and nuts, seeds, and soy products.¹²¹⁸ The guidelines state that saturated fat content should be below 10 percent of calories, added sugars below 10 percent of calories, and salt below 2300 mg per day.¹²¹⁹ Children between 6 and 12 years old should consume 1,600 to 2,200 calories per day.¹²²⁰ Adult men and women should consume 2,500 calories and 2,000 calories, respectively, per day.¹²²¹

Aubert stated that other food boxes distributed consisted of Cheez-It crackers, Hershey candy bars, and vanilla pudding snack packs,¹²²² while research shows that cardiovascular risk factors and cardiovascular diseases across Hispanic subgroups born in the U.S. suggest that mainland Puerto Ricans experience high rates of individual cardiovascular risk factors.¹²²³ However, FEMA indicated that they were engaged in a massive feeding operation with overlapping work of local agencies, private contractors, and nongovernmental organizations, and according to contractors and contract solicitations, all of the agency's meals complied with strict nutritional standards, and the snacks were not provided as meals.¹²²⁴

¹²¹⁵ Sara Kiley Watson, "Food Aid to Puerto Rico is Salty, Sugary, and Unbalanced, Researcher Says," *NPR*, Jun. 22, 2018, <https://www.npr.org/sections/thesalt/2018/06/22/621036893/food-aid-to-puerto-rico-is-salty-sugary-and-unbalanced-researcher-says>.

¹²¹⁶ Aubert Statement, at 8.

¹²¹⁷ Cruz Soto Statement, at 5.

¹²¹⁸ Nutrition Coalition, "US Dietary Guidelines for Americans – 101," <https://www.nutritioncoalition.us/dietary-guidelines-for-americans-dga-introduction>.

¹²¹⁹ *Ibid.*

¹²²⁰ KidsHealth, "Learning About Calories," Jun. 2018, <https://kidshealth.org/en/kids/calorie.html>

¹²²¹ Yvette Brazier, "How Many Calories Should I Eat A Day?" Feb. 12, 2018, <https://www.medicalnewstoday.com/articles/245588>

¹²²² Aubert Statement, at 8.

¹²²³ Daviglus ML, Talavera GA, Avilés-Santa ML, Allison M, Cai J, Criqui MH, Gellman M, Giachello AL, Goukova N, Kaplan RC, LaVange L, Penedo F, Perreira K, Pirzada A, Schneiderman N, Wassertheil-Smoller S, Sorlie PD, Stamler J. "Prevalence of major cardiovascular risk factors and cardiovascular diseases among Hispanic/Latino individuals of diverse backgrounds in the United States." *JAMA*. 2012 Nov 7;308(17):1775-84, <https://pubmed.ncbi.nlm.nih.gov/23117778/>.

¹²²⁴ Caitlin Dewey, "Why FEMA sent 'junk food' to Puerto Rican hurricane survivors," *Washington Post*, Oct. 24, 2017, <https://www.washingtonpost.com/news/wonk/wp/2017/10/24/why-fema-sent-junk-food-to-puerto-rican-hurricane-survivors/>.

As discussed above, reports showed that due to the delays in federal aid, FEMA was unable to “ensure it provided commodities to Puerto Rico disaster survivors, as needed to sustain life and alleviate suffering...”¹²²⁵ While assistance did eventually arrive to the Island, that aid was either too little or too late for many survivors. As expressed by Carmen Yulin Cruz Soto, former Mayor of San Juan, hundreds of Puerto Ricans died because help was not received in time.¹²²⁶ She stated, “think about this: Hurricane Harvey impacted about 13 million people and 88 people died. María affected 3.5 million people and 3,000 died. One life is not more important than other; but negligence no doubt, took a toll.”¹²²⁷ Moreover, Cristina Miranda, Executive Director of Liga de Ciudades, explained that one Harvard study found that a third of deaths after the hurricane were due to interruptions in medical care caused by power cuts and broken road links.¹²²⁸

Postdoctoral Fellow at Harvard Medical School Charley Willison wrote that the difference in responses would be unsurprising if María was less damaging than Harvey.¹²²⁹ Data show however that Harvey made landfall as a Category 4 hurricane and María made landfall as a “high-end” Category 4, which is just below the threshold of a Category 5 hurricane.¹²³⁰ Moreover, María resulted in more damage to Puerto Rico than Harvey did in Texas as measured by loss of electricity and housing, with overall damage estimates comparable to Harvey.¹²³¹ Willison explained that “assuming that infrastructure costs are higher in Texas... and therefore more expensive to repair, compared to Puerto Rico, the high damage estimates in Puerto Rico emphasized the severity of its damage.”¹²³² Data show that the difference in federal response and aid received was not proportionate with storm severity or need after landfall after María compared with Harvey. Further, this trend in disparities of aid awarded to Harvey survivors, compared to María survivors, remains consistent for the total of federal dollars received by survivors, including FEMA dollars, national flood-insurance payouts, and loans from the SBA.¹²³³

In 2019, GAO found that the length of time between a disaster incident and when FEMA obligates funding influences how quickly locations are able to recover from disasters, thus impacting populations affected by disasters in remote areas.¹²³⁴ GAO reported that FEMA did not meet its national timeliness goals for processing PA applications within 45 days and obligating funds within 189 days in FY2019, and also found delays in developing PA projects in

¹²²⁵ Cruz Soto Statement, at 2.

¹²²⁶ Ibid.

¹²²⁷ Ibid, at 8.

¹²²⁸ Miranda Statement, at 2.

¹²²⁹ Willison Statement, at 2.

¹²³⁰ Ibid.

¹²³¹ Ibid.

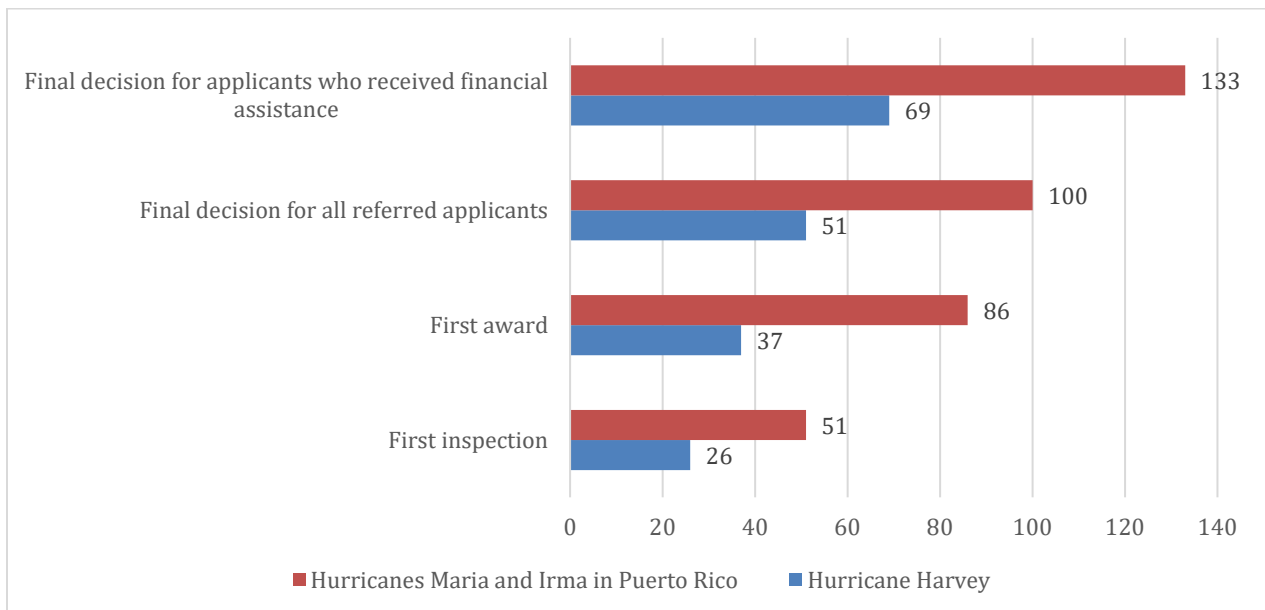
¹²³² Willison et al., “Quantifying inequities in US federal response to hurricane disaster in Texas and Florida compared with Puerto Rico.”

¹²³³ Ibid.

¹²³⁴ Currie Statement, at 3.

Puerto Rico following Hurricanes Irma and María.¹²³⁵ Figure 13 below provides the average number of days between application and points in the IHP process for survivors of Hurricane Harvey as well as Hurricanes María and Irma in Puerto Rico, illustrating that applicants in Puerto Rico saw much longer wait periods for all important stages in the process. FEMA has indicated that it is working to address recommendations to develop goals considering the unique challenges that a recovery mission faces in insular and remote areas and use timeliness data to identify and address inefficiencies in the application process.¹²³⁶

Figure 13 Average Number of Days Between Application and Key Points in IHP Process



Source: Currie Statement, p. 10, p. 13.

In its 2017 Hurricane Season After-Action Report, FEMA reported that by November 30, 2017, it conducted almost half the number of housing inspections in Puerto Rico as it did in Texas (584,056 and 260,898, respectively). Six months after María, one community leader in Yauco had visited the FEMA office multiple times asking it to send an inspector to her remote mountain community to inspect the forty homes damaged there, but it still had not come.¹²³⁷ By May 2018, the number of housing inspections conducted in Puerto Rico jumped to 803,704, while those conducted in Texas slightly increased to 608,516.¹²³⁸ The Commission received a public statement from a survivor in Puerto Rico that described being denied after applying for the COR3 program because the program “sent an investigator and said that María had not passed

¹²³⁵ Ibid.

¹²³⁶ Ibid.

¹²³⁷ Navarro Statement, at 9.

¹²³⁸ FEMA, *2017 Hurricane Season After-Action Report*, at A-2, https://www.fema.gov/sites/default/files/2020-08/fema_hurricane-season-after-action-report_2017.pdf

through here.”¹²³⁹ One homeowner in Orocovis was denied assistance twice after FEMA indicated her home had not sustained enough damage, though when visited by Hispanic Federation, all walls had been destroyed except for two.¹²⁴⁰ This brings to light a potential pitfall in the language used for FEMA’s habitability standard – as it specifically mentions doors, roofs, and windows, but not walls.¹²⁴¹ Additionally, lawyers have identified assistance denial cases where inspectors had recorded a “No Damage” assessment of a home that they had not actually visited.¹²⁴²

In Puerto Rico, after María’s landfall, the electrical grid failed.¹²⁴³ In 30 days post-landfall, 21 percent of customers regained access to power, and in 60 days, the percentage rose to 49 percent.¹²⁴⁴ In 90 days, 65 percent of customers in Puerto Rico regained access to power.¹²⁴⁵ As of March 18, 2021 (approximately three and a half years post-María), almost all residents were able to receive an electrical hookup.¹²⁴⁶

Moreover, following María’s landfall, water systems were inoperable.¹²⁴⁷ Thirty days post-landfall, water service access increased by 49 percent (from 20 to 69 percent), and to 91 percent in 90 days.¹²⁴⁸ As of March 18, 2021, water was restored for 99.5 percent of customers.¹²⁴⁹ Initially, María knocked out 95 percent of cellular sites in Puerto Rico. Yet, in 30 days post-landfall, 61 percent were operating, increasing to 96 percent after 60 days, and then to 99.8 percent as of March 18, 2021.¹²⁵⁰

In preparation for Harvey’s landfall, FEMA consulted the 2013 “Regional VI All Hazards Plan” and the 2017 “Texas Hurricane Plan” and invested \$205 million in the coastal areas of Texas for the acquisition and elevation of 1,618 properties.¹²⁵¹ Conversely, in preparation for María’s landfall, FEMA only consulted the 2012 “Earthquake and Tsunami Operational Plan,” despite its awareness of Puerto Rico’s poor infrastructure prior to the landfall.¹²⁵² FEMA reported that its

¹²³⁹ Olga L. López Colón, Public Comment, Dec. 29, 2021 [on file].

¹²⁴⁰ Navarro Statement, at 10.

¹²⁴¹ See, *supra* notes 445-447.

¹²⁴² Martínez-Román Statement, at 4.

¹²⁴³ FEMA, “Puerto Rico One Year after Hurricanes Irma and María,” (first released) Sept. 6, 2018, (updated Mar. 18, 2021), <https://www.fema.gov/press-release/20210318/puerto-rico-one-year-after-hurricanes-irma-and-maria>.

¹²⁴⁴ *Ibid.*

¹²⁴⁵ *Ibid.*

¹²⁴⁶ *Ibid.*

¹²⁴⁷ *Ibid.*

¹²⁴⁸ *Ibid.*

¹²⁴⁹ *Ibid.*

¹²⁵⁰ *Ibid.*

¹²⁵¹ FEMA, *2017 Hurricane Season After-Action Report*, at 8; FEMA, “Losses Avoided from Hurricane Harvey in Texas: FEMA Hazard Mitigation Assistance (HMA)- Funded Acquisition and Elevation Projects,” Table 2, <https://www.fema.gov/case-study/losses-avoided-hurricane-harvey-texas>, (last updated on Feb. 11, 2021).

¹²⁵² FEMA, *2017 Hurricane Season After-Action Report*, at 7-8.

efforts in Texas avoided over \$330 million in losses related to Harvey.¹²⁵³ In regard to María, however, FEMA admitted in its 2017 Hurricane Season After-Action Report that the “Earthquake and Tsunami Operational Plan” was insufficient preparation and left FEMA to rely on crisis action planning during the hurricane to compensate for the shortfalls.¹²⁵⁴ Additionally, it found that “FEMA could have better leveraged open-source information and preparedness data, such as capability assessments and exercise findings, for Puerto Rico...”¹²⁵⁵

FEMA’s assessment of infrastructure and community impacts during María was primarily determined by crowdsourcing.¹²⁵⁶ It relied more heavily on crowdsourcing than it had during prior hurricanes. Crowdsourcing efforts aided FEMA’s understanding and knowledge of the extent of the damage, with over 5,400 digital volunteers collecting and analyzing images of damage around Puerto Rico. Volunteers collected information on hospital status, road and bridge closures, and food and fuel availability.¹²⁵⁷ Two days after María made landfall, FEMA executed an air reconnaissance mission, focusing on the northeastern and southeastern regions of Puerto Rico. They collected data and took photos of critical infrastructure elements.¹²⁵⁸

The 2017 Hurricane Season After-Action Plan found that FEMA struggled to comprehensively track the billions of dollars in resources as it moved them across multiple modes of transportation to Puerto Rico because of staffing shortages and business process shortfalls.¹²⁵⁹ However, FEMA did not face the same struggle post-Harvey because the Texas National Guard managed commodity distribution. Additionally, FEMA continued to view distribution point locations, inventory, and overall commodity burn rates by accessing Texas’ crisis management software program.¹²⁶⁰

FEMA faced additional unique struggles when providing recovery aid in Puerto Rico. María landed in Puerto Rico before the water, tarps, and cots at FEMA’s Caribbean Distribution Center warehouse had been replenished.¹²⁶¹ The Caribbean Distribution Center was the only emergency stockpile in the region and is located in Puerto Rico.¹²⁶² When María hit, 83 percent of all the items, including 90 percent of the water, and all the cots and tarps, had been deployed after Irma hit the U.S. and the Virgin Islands.¹²⁶³ FEMA also had a 37 percent staffing shortage by September 2017 when María landed. Half of its workforce lacked certification in their respective

¹²⁵³ Ibid.

¹²⁵⁴ Ibid.

¹²⁵⁵ Ibid, at vi.

¹²⁵⁶ Ibid, at 34.

¹²⁵⁷ Ibid.

¹²⁵⁸ Ibid.

¹²⁵⁹ Ibid, at viii.

¹²⁶⁰ Ibid, at 28.

¹²⁶¹ Ibid, at 26.

¹²⁶² Ibid.

¹²⁶³ Ibid.

disaster response positions, and so were serving in capacities for which they did not hold the title of “Qualified.”¹²⁶⁴ FEMA officials noted that staff shortages can contribute to supervisors being overextended and tasks taking longer to complete than expected, and that a lack of trained personnel with program expertise led to complications in its response efforts, particularly after Hurricane María.¹²⁶⁵ In the 2017 Hurricane Season After-Action Report, FEMA admitted that its staff shortages could have led to inefficiency in disaster relief assistance.¹²⁶⁶

As mentioned previously, Congress passed a bill in December 2017 and signed it in February 2018, providing \$84 billion in disaster aid for hurricane relief in Florida, Texas, Puerto Rico, the U.S. Virgin Islands, and wildfire relief for California.¹²⁶⁷ During the debate regarding this bill, Puerto Rico was denied \$4.6 billion to aid its Medicaid program and already receives less in matching funds¹²⁶⁸ than U.S. states to help cover Medicaid costs. This is significant since approximately 40 percent of the Island’s residents receive Medicaid, and the hurricane exacerbated the health crisis that was looming over Puerto Rico prior to María’s landfall.¹²⁶⁹ Charley Willison, Postdoctoral Fellow at Harvard University Department of Health Care Policy, wrote that the delayed signing of this bill contributed to the delayed financial relief to Puerto

¹²⁶⁴ Jason Thomas Barnosky, Patrick S. Roberts, and Joie D. Acosta, “What Can FEMA Learn from the Historic 2017 Hurricane and Wildfire Seasons?” *RAND*, Feb. 3, 2020, <https://www.rand.org/blog/2020/02/what-can-fema-learn-from-the-historic-2017-hurricane.html>.

¹²⁶⁵ GAO, *2017 Hurricanes and Wildfires: Initial Observations on the Federal Response and Key Challenges*, p. 121 (Sept. 2018) <https://www.gao.gov/assets/gao-18-472.pdf>.

¹²⁶⁶ FEMA, *2017 Hurricane Season After-Action Report*, at 16.

¹²⁶⁷ H.R. 4667, “Making further supplemental appropriations for the fiscal year ending September 30, 2018, for disaster assistance for Hurricanes Harvey, Irma, and María, and calendar year 2017 wildfires, and for other purposes,” 115th Congress (2017-2018), <https://www.congress.gov/bill/115th-congress/house-bill/4667>; H.R. 1892, “Bipartisan Budget Act of 2018,” 115th Congress (2017-2018), <https://www.congress.gov/bill/115th-congress/house-bill/1892>.

Disaster aid was a small component of the bipartisan budget bill, which was delayed due to political negotiations. The bill raised federal spending by almost \$300 billion over two years above limits imposed by a 2011 budget law, directing \$90 billion to help states affected by 2017 disasters, with \$2 billion directed for the Puerto Rico and U.S. Virgin Islands electrical grids. See Kristina Peterson, Richard Rubin, and Natalie Andrew, “What’s in the Bipartisan Spending Deal?” *The Wall Street Journal*, Feb. 8, 2019, <https://www.wsj.com/articles/whats-in-the-bipartisan-spending-deal-1518063649>.

¹²⁶⁸ While states receive open-ended federal funds to match a specified percentage of their expenditures for Medicaid-covered health services that their enrollees receive, Puerto Rico receives a fixed block grant funding amount each year. Once the block grant funding is exhausted, Puerto Rico must use its own funds to pay the entire remaining cost of Medicaid health care services. In the states, the percentage of Medicaid costs that the federal government covers is based on a state’s per capita income relative to that of the nation as a whole. If Puerto Rico’s federal matching rate were determined using the same formula as is applied to the states, its federal Medicaid matching rate would be 83 percent. Instead, Puerto Rico draws down its federal block grant funds at a far lower matching rate set in statute at 55 percent.

Judith Solomon, “Puerto Rico’s Medicaid Program Needs and Ongoing Commitment of Federal Funds,” *Center on Budget and Policy Priorities*, Apr. 22, 2019, <https://www.cbpp.org/research/health/puerto-ricos-medicaid-program-needs-an-ongoing-commitment-of-federal-funds>.

¹²⁶⁹ See e.g., John Bresnahan and Heather Caygle, “How politics screwed Puerto Rico out of billions in disaster aid,” *Politico*, Dec. 23, 2017, <https://www.politico.com/story/2017/12/23/puerto-rico-disaster-aid-medicaid-315974>; David Dayen, “Puerto Rico Relief Bill Cancels \$16 Billion in Debt – But Not for Puerto Rico,” *The Intercept*, Oct. 11, 2017, <https://theintercept.com/2017/10/11/puerto-rico-relief-bill-cancels-16-billion-in-debt-but-not-for-puerto-rico/>.

Rico.¹²⁷⁰ Moreover, as a section of this bill, Congress mandated that the Puerto Rican governor establish a 12-month and 24-month recovery plan that would be endorsed by the Oversight Board established under the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) that requires monthly reports to Congress.¹²⁷¹ This requirement and approval of recovery plans were not contingent factors for either Florida or Texas to receive aid.¹²⁷²

Some media sources suggest the Puerto Rican government was overwhelmed by the time María made landfall because it was the third major storm within a month and the local government was already inundated with needs from the prior storms.¹²⁷³ Others add that nonexistent communication made it difficult to know what resources were needed and how to transport them to an island with damaged ports and airports.¹²⁷⁴ FEMA testified that limited preparedness by Puerto Rico for a Category 5 hurricane and incapacitation of local response functions due to widespread devastation and loss of power and communications led FEMA to assume response functions that the territory would usually perform itself.¹²⁷⁵ In addition to finding temporary housing for disaster survivors given the extensive damage to available housing in each location, locating accommodations for the nearly 15,000 federal government employees deployed to assist in response activities became a major challenge.¹²⁷⁶

Issues in Providing Aid

There are many stages in the relief and recovery process and navigating these steps can be complex and complicated. Individuals and communities may encounter a variety of different barriers when trying to apply for disaster assistance. In response to the Commission's interrogatory requests, FEMA provided several examples of documents and guidance that the agency utilizes in order to mitigate some of these barriers. For instance, FEMA issued a Language Access Plan for individuals with limited English proficiency.¹²⁷⁷ FEMA has also

¹²⁷⁰ Willison Statement, at 5; *see also*, Kathya Severino, "How Latest Federal Appropriations for Disaster Relief Help Puerto Rico," Center for Puerto Rican Studies at City University of New York, Feb. 15, 2018, <https://centropr.hunter.cuny.edu/events-news/puerto-rico-news/congress/how-latest-federal-appropriations-disaster-relief-help-puerto>.

¹²⁷¹ H.R. 1892, "Bipartisan Budget Act of 2018," 115th Congress (2017-2018), <https://www.congress.gov/bill/115th-congress/house-bill/1892>.

¹²⁷² Willison et al., "Quantifying inequities in U.S. federal response to hurricane disaster in Texas and Florida compared with Puerto Rico."

¹²⁷³ Danny Vinik, "How Trump favored Texas over Puerto Rico," *Politico*, Mar. 27, 2018, <https://www.politico.com/story/2018/03/27/donald-trump-fema-hurricane-maria-response-480557?cid=apn>.

¹²⁷⁴ *Ibid.*

¹²⁷⁵ Joint FEMA Statement, at 10.

¹²⁷⁶ *Ibid.*

¹²⁷⁷ FEMA, Language Access Plan, Aug. 11, 2021, https://www.fema.gov/sites/default/files/documents/fema_language-access-plan_12-2020.pdf.

issued a Section 504 Implementation Plan to address barriers in accessing programs and activities for individuals with disabilities.¹²⁷⁸

Language barriers

One of the major hurdles in applying for and accessing aid are language barriers.¹²⁷⁹ This was especially true post-María in Puerto Rico but was also an issue with providing assistance in the wake of Hurricane Harvey. At the Commission's briefing in June 2021, Acting Associate Administrator for FEMA's Office of Response and Recovery David Bibo testified that

the quantity of personnel that we had who were fluent in Spanish as we approached a very significant incident, particularly in Puerto Rico, was a limitation for us. We did not have as many personnel that were fluent in Spanish as would have been helpful in delivering the assistance that we needed to deliver at speed.¹²⁸⁰

Bibo further explained that as a result, FEMA has hired many employees locally in Puerto Rico to aid in the rebuilding process.¹²⁸¹ He told the Commission that:

We now find ourselves in a position where we have a solid core of Spanish speakers, which is, I would say, the most frequent language that is of greatest consequence in the disaster environment facing, but it's not the only. And so, we have to rely on a range of other tools, contractors, for instance, to resolve other shortfalls.¹²⁸²

Bibo explained that it is common practice for FEMA statements and press releases to be released in both English and Spanish.¹²⁸³ However, Diane Yentel, President and CEO of the National Low Income Housing Coalition, testified that when documents were translated into Spanish, the translations were often inaccurate and confusing,¹²⁸⁴ and as mentioned above, informational fliers announcing the locations of shelters after Harvey were only in English, thus not reaching many communities with limited English proficiency.¹²⁸⁵ The GAO also reported that FEMA did not have enough Spanish-speaking employees to accommodate all of Puerto Rico, which resulted in delays in aid and assistance as FEMA tried to get enough bilingual staffers to send to Puerto

¹²⁷⁸ FEMA, FEMA Section 504 Implementation Plan, https://www.fema.gov/sites/default/files/2020-06/fema_section-504-implementation-plan.pdf, (last accessed August 11, 2021).

¹²⁷⁹ See, *supra* notes 829-830 (discussing Harvey language barriers) and 1114-1128 (discussing María language barriers).

¹²⁸⁰ David Bibo, Acting Associate Administrator for FEMA's Response and Recovery, *DC Briefing*, testimony, p. 71.

¹²⁸¹ *Ibid.*

¹²⁸² *Ibid.*, at 72.

¹²⁸³ *Ibid.*

¹²⁸⁴ Yentel Statement, at 5.

¹²⁸⁵ Chriselle Palay, Director, H.O.M.E. Coalition, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Aug. 20, 2020, at 15 [on file].

Rico.¹²⁸⁶ In many instances, home inspectors only spoke English while the survivor only spoke Spanish, which resulted in some survivors being denied aid due to their inability to communicate with home inspectors.¹²⁸⁷

Former Director of FEMA’s Office of Equal Rights Jo Linda Johnson further explained that FEMA has expanded language access by utilizing technology. For example, at FEMA’s Community Vaccination Centers they developed a “language line” that provided information in over 180 languages and also used technology to provide sign language interpreters when an individual comes into one of the Centers.¹²⁸⁸

In terms of providing assistance (e.g., inspectors, contractors, applications) to individuals on the ground in the wake of a disaster, Johnson also testified that if FEMA has the information ahead of time about the needs of a household, then they can provide the assistance that is needed. Johnson stated that “[i]n reality, however, we often do not have that information ahead of time. And that’s where we can use technology to assist our contractors in the field.”¹²⁸⁹ The Commission received testimony that in Puerto Rico, however, where it is widely known that the primary language is Spanish, FEMA employees not fluent in Spanish were deployed to inspect homes, resulting in incomplete inspections, missed appointments, misunderstandings, underestimates for financial assistance, and denials.¹²⁹⁰

Director for the Southeast Region at LatinoJustice, Kira Romero-Craft testified at the Commission’s June 2021 briefing that language access has been and continues to be a barrier in applying for and accessing aid from FEMA. She stated:

I will say directly from our experiences of working with folks who had been displaced who were receiving TSA that were in Florida, in Georgia, and beyond, they had great difficulties when they would call to try to update their applications [and] [] try to submit documents. You can imagine that these people did not have access to computers, [] those that did have smartphones would try to access the programming via their smartphones. And it was not user-friendly. A lot of times the way that the information was represented on their phone was not the way that it was being stored or captured via the programming through the FEMA program.

In addition, when folks would call that were Spanish language-dominant only, they were met oftentimes with folks who could not speak Spanish, who were not bilingual. They did

¹²⁸⁶ GAO, *2017 Hurricanes and Wildfires: Initial Observations on the Federal Response and Key Recovery Challenges*, p. 37.

¹²⁸⁷ García, “Deemed Ineligible: Reasons Homeowners in Puerto Rico Were Denied Aid After Hurricane María,” at 12-13.

¹²⁸⁸ Jo Linda Johnson, Director of FEMA’s Office of Equal Rights, testimony, *DC Briefing*, p. 74.

¹²⁸⁹ *Ibid*, at 74.

¹²⁹⁰ Navarro Statement, at 9.

not have access to a language line that could provide translation assistance. And so, our hope and our suggestion would be that [] in the face of what is promising to be an active hurricane season, that FEMA does prepare with adequate language assistance, with bilingual workers. And I understand that they train folks in advance and then they deploy them as necessary. Hopefully, that won't be the case this hurricane season.¹²⁹¹

She further recommends that, knowing that another disaster will inevitably occur and since language has proven to be a barrier for individuals seeking aid that FEMA “prepare accordingly” and be prepared with the necessary materials, including providing language access.¹²⁹²

Accessibility for Persons with Disabilities

As discussed previously, the federal, state, and local responses failed to ensure that individuals with disabilities were given the appropriate and necessary aid following both Hurricanes Harvey and María.¹²⁹³

Nicole Roy testified to her first-hand experience with aiding survivors with disabilities in Puerto Rico and recounted that:

We saw many people denied for generators that had medical needs [and/or] disabilities that needed extenuating assistance or in-person visits... They could not access anything online, and that was a large-scale confusion here on the island. You had people that were not able to read or write, so some of the process was difficult for them. We had to walk them through things and do even re-applications after they were denied.¹²⁹⁴

One reason for the lack of support post-María was due to the absence of support from both the territorial government and federal officials.¹²⁹⁵ In terms of Harvey, however, the Partnership for Inclusive Disaster Strategies found that many persons with disabilities cited similar issues when trying to access aid; noting that in Texas there is not a specific office or individual with the responsibility to provide disability inclusive emergency management. Moreover, the report stated that in Texas, when experts did arrive, such as ADA specialists and advocates and Applied Behavior Analysis therapists, they were turned away from shelters because they were not registered with the Red Cross.¹²⁹⁶

¹²⁹¹ Romero-Craft Testimony, *DC Briefing*, pp. 116-117.

¹²⁹² *Ibid.*, at 117.

¹²⁹³ *See, supra* notes 713-748 (discussing Harvey) and 1087-1112 (discussing María).

¹²⁹⁴ Roy Testimony, *DC Briefing*, p. 96.

¹²⁹⁵ *Ibid.*

¹²⁹⁶ Roth et al., “Getting It Wrong: An Indictment with a Blueprint for Getting It Right.”

In determining disaster related damage, FEMA assesses the habitability of the residence.¹²⁹⁷ If a residence is deemed “safe to occupy” the applicant will be denied IHP assistance, as it is presumed habitable.¹²⁹⁸ Following Harvey, flooding resulted in mold damage to many applicants’ homes. FEMA did not consider this as preventing safe occupation, despite that individuals with cancer, sickle cell, lupus, COPD, asthma, cardiovascular disease, or any other immunocompromised health condition would often be unable to live safely in a mold-infested home.¹²⁹⁹ One individual, a veteran with a disability who was still awaiting VA benefits, was denied assistance because the mold in their home did not render the residence uninhabitable according to FEMA’s habitability standard. Yet this disaster survivor did not have the financial means to relocate and remaining in the residence exacerbated their lupus, leading to hospitalization and eventually homelessness.¹³⁰⁰ FEMA’s updated Individual Assistance Program and Policy Guide now indicates that applicants may provide FEMA with documentation about their disabilities that could potentially impact the habitability determination.¹³⁰¹

Listening Sessions¹³⁰²

After María and Harvey, the Department of Homeland Security (DHS) held a series of listening sessions to assess some of the civil rights concerns that arose in the aftermath of the hurricanes. At these listening sessions convened by the Department’s Office of Civil Rights and Civil Liberties (CRCL), community stakeholders identified deficiencies in the federal government’s response and made several suggestions for the government to enhance the accessibility of its disaster communications. At each listening session, community members raised that there was a lack of preparedness at all levels of government, FEMA, state, local, and territorial, and that these entities have obligations under civil rights laws to prepare for and serve all members of the community.¹³⁰³ Some survivors suggested that FEMA should provide disability training to all of its shelter personnel, including registration, medical, and security workers.¹³⁰⁴ With better

¹²⁹⁷ FEMA, “Reasons Why FEMA May Have Found You Ineligible,” Sept. 23, 2020, <https://www.fema.gov/fact-sheet/4562/reasons-why-fema-may-have-found-you-ineligible>.

¹²⁹⁷ Stephanie Duke, Public Comment, Nov. 22, 2021 [on file].

¹²⁹⁸ Ibid.

¹²⁹⁹ Ibid.

¹³⁰⁰ Ibid.

¹³⁰¹ FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, at 78.

¹³⁰² DHS also held listening sessions in the U.S. Virgin Islands and heard civil rights concerns raised at those meetings. See Off. for C.R. and C.L., Dep’t of Homeland Sec., Listening Session Recap, St. Croix, USVI (May 17, 2018), https://www.dhs.gov/sites/default/files/publications/Listening%20Session%20Recap_St_Croix_USVI_0.pdf; Off. for C.R. and C.L., Dep’t of Homeland Sec., Listening Session Recap, St. Thomas, USVI (May 16, 2018), <https://www.dhs.gov/sites/default/files/publications/Listening%20Session%20Recap%2C%20U.S.%20Virgin%20Islands%2C%20St.%20Thomas.pdf>.

¹³⁰³ U.S. Dep’t of Homeland Security Office for Civil Rights and Civil Liberties, Response to Affected Agency Review, May 25, 2022 [on file].

¹³⁰⁴ Houston Recap, at 8.

training, shelter workers would be better equipped to assist people with disabilities and to recognize when someone needs a mobility aid.¹³⁰⁵

Some community members suggested that SLTTs can better prepare for disasters by utilizing disaster registries¹³⁰⁶ and by increasing collaboration with other community organizations and governmental bodies.¹³⁰⁷ By maintaining effective registries, SLTTs will be more prepared to address disaster needs because they will have a greater sense of the community's needs. Other community members caution against the use of such registries for numerous reasons, including not being kept up to date and misinformation about the purpose of registries.¹³⁰⁸

Survivors of Harvey reported accessibility issues in the process of applying for aid.¹³⁰⁹ In Houston, community members noted that FEMA's application did not clearly provide applicants with the opportunity to request disability accommodations.¹³¹⁰ Furthermore, the application process posed additional difficulties for blind and visually impaired applicants.¹³¹¹ There were no suggestions for potential remedies beyond the assertion that FEMA needs to improve accessibility to its applications. Many survivors in Puerto Rico had their wheelchairs damaged by María and they were not supplied with replacement wheelchairs.¹³¹² FEMA did not provide Puerto Rican survivors with access to life-saving electricity,¹³¹³ and did not give families the space to be with their children with disabilities in emergency care.¹³¹⁴ In several past disasters, FEMA failed to provide adequate methods of transportation to its facilities, leaving many people with disabilities unable to travel to recovery centers.¹³¹⁵

FEMA's inability to provide people with disabilities with accessible medical equipment was another general theme throughout all the sessions.¹³¹⁶ Community members in Houston noted that there was a lack of accessible showers and other accessibility features at long-established shelters.¹³¹⁷ Individuals with disabilities were unable to access items such as hospital beds, accessible showers, and other accessibility equipment.¹³¹⁸

¹³⁰⁵ Ibid.

¹³⁰⁶ Houston Recap, at 4; Puerto Rico Recap, at 5.

¹³⁰⁷ Houston Recap, at 5; Puerto Rico Recap, at 5.

¹³⁰⁸ U.S. Dep't of Homeland Security Office for Civil Rights and Civil Liberties, Response to Affected Agency Review, May 25, 2022 [on file].

¹³⁰⁹ Houston Recap, at 9.

¹³¹⁰ Ibid.

¹³¹¹ Ibid.

¹³¹² Puerto Rico Recap, at 9.

¹³¹³ Ibid, at 8.

¹³¹⁴ Ibid, at 7.

¹³¹⁵ Houston Recap, at 7; Puerto Rico Recap, at 4.

¹³¹⁶ See, e.g., Houston Recap, at 7-8.

¹³¹⁷ Houston Recap, at 7.

¹³¹⁸ Ibid, but see those assistance services provided by FEMA's Individuals and Households Program, <https://www.fema.gov/assistance/individual/program> (accessed April 26, 2022).

Following DHS listening sessions, the DHS' CRCL made recommendations to state, local, territorial, and tribal emergency managers to improve the delivery of disaster assistance to disaster survivors with disabilities. The recommendations covered: preparedness, evacuation, effective communication access for people with disabilities, sheltering, and long-term recovery.¹³¹⁹

Cultural Competencies and Property Rights

Another barrier for homeowners to receive federal aid was due to a lack of cultural competency and knowledge of local property rights and underlying property law. David Bibo of FEMA noted in testimony to the Commission that when responding to a disaster, FEMA will designate a division supervisor or branch director to oversee a geographic area in an effort to understand the unique cultural properties of the disaster area to inform how to best respond.¹³²⁰ Bibo cited specific examples of how FEMA will adjust to local preferences, including understanding commonly spoken languages, whether “it’s a population that relies more on receiving information via radio than television, if it’s a population that is more likely to come in person to apply for disaster assistance rather than to pick up the phone or to go on the Internet.”¹³²¹

In testimony to the Commission, FEMA representatives acknowledged the need to have individuals on the ground who understand local practices, and over the past several years the agency has worked to hire and/or contract individuals who are able to better navigate these issues.¹³²²

A 2021 study conducted by Ivis García that entailed qualitative interviews with María survivors found a lack of cultural competence played a key role in housing denials from FEMA due to issues such as the inability to provide documentation proving ownership, inability to schedule an inspection or issues with the inspection, and socioeconomic vulnerability, among other reasons.¹³²³ As this report has documented, in Puerto Rico, the inability to prove homeownership was a leading cause of these denials.¹³²⁴ Although FEMA policies allow for alternative documentation, García indicated that many of these denials were due to FEMA not recognizing non-traditional housing arrangements and not having the awareness of Puerto Rico’s Civil Code.¹³²⁵ For those homeowners that were denied, many were subsequently treated as renters and only reimbursed for damage to their personal belongings and not given assistance to repair

¹³¹⁹ U.S. Dep’t of Homeland Security, “Recommendations for Emergency Managers for Improving the Delivery of Disaster Assistance to Disaster Survivors with Disabilities,” last updated Nov. 11, 2021, <https://www.dhs.gov/publication/recommendations-emergency-managers-disaster-assistance-survivors-disabilities>.

¹³²⁰ Bibo Testimony, *DC Briefing*, pp. 63-64.

¹³²¹ *Ibid.*, at 64.

¹³²² *Ibid.*, at 65-66, 71.

¹³²³ García, “Deemed Ineligible: Reasons Homeowners in Puerto Rico Were Deemed Aid After Hurricane María.”

¹³²⁴ *Ibid.*

¹³²⁵ *Ibid.*

their homes. As a result, this led to many homeowners being underpaid and delayed recovery for many on the Island.¹³²⁶

Nicole Roy, project coordinator with the Salvation Army, witnessed first-hand and testified to the Commission that in Puerto Rico:

[T]he cultural insensitivity here also was prevalent in the fact that when homes were being assessed, unfortunately they were being understood as this a family home, an entity that has been passed down. There was a lot of cultural confusion with how to proceed... And unfortunately, many people got left behind in that and we had to really help. We were lucky for free legal assistance that partnered with us. We were lucky for those that were willing to come out and do assessments. And again, this was something that there was a disconnect with an outside force and with FEMA, [and] with an actual survivor.¹³²⁷

Residents in the continental U.S. also claimed similar issues when seeking IHP assistance from FEMA.¹³²⁸ For instance, some homeowners in the rural South have been denied assistance to repair their homes after a disaster because they generationally inherited the property and land. According to a report by the Washington Post, more than a third of Black-owned land in the South is passed down informally, rather than through deeds and wills.¹³²⁹ “It’s a custom that dates to the Jim Crow era, where Black people were excluded from the Southern legal system. When land is handed down like this, it becomes the heirs’ property, a form of ownership in which families hold property collectively, without clear title.”¹³³⁰ The Department of Agriculture explains that individuals feel that this practice protects their land, however, heirs’ property is “the leading cause of Black involuntary land loss” and without formal documentation, homeowners may be denied access to federal loans and grants.¹³³¹

Ben Hirsch, Co-Director of West Side Recovery, explained that they have worked with many families that have been denied FEMA assistance due to heirship reasons.¹³³² He explained that:

¹³²⁶ Ibid.

¹³²⁷ Roy Testimony, *DC Briefing*, p. 96.

¹³²⁸ Hannah Dreier and Andrew Ba Tran, “‘The real damage,’ Why FEMA is denying disaster aid to Black families that have lived for generations in the Deep South,” *Washington Post*, Jul. 11, 2021, [https://www.washingtonpost.com/nation/2021/07/11/fema-black-owned-property/..](https://www.washingtonpost.com/nation/2021/07/11/fema-black-owned-property/)”

¹³²⁹ Ibid; *see also*, Lizzie Presser, “Their Family Bought Land One Generation After Slavery. The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It,” *ProPublica*, Jul. 15, 2019, <https://features.propublica.org/black-land-loss/heirs-property-rights-why-black-families-lose-land-south/>.

¹³³⁰ Dreier and Ba Tran, “‘The Real Damage’ Why FEMA is denying aid to Black families that have lived for generations in the Deep South.”

¹³³¹ Presser, “Their Family Bought Land One Generation After Slavery. The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It.”

¹³³² Hirsch Statement, at 3.

Families often hold homes in heirship as a collective economic survival strategy. A family member in hard times can return to a family home, or a family home can be used to root a family in a place that has cultural significance. Furthermore, many families simply do not have the resources to secure the legal assistance needed to go through probate court or create wills needed to have single person ownership.¹³³³

Francisco Sánchez, Jr., President of the Emergency Management Association of Texas, also testified that heirship issues serve as another factor that weighs against many in underserved communities, particularly among African-Americans.¹³³⁴ While FEMA has made some changes to its Individual Assistance Program and Policy Guide (discussed in Chapter 4), Brittany Perrigue Gomez of Texas RioGrande Legal Aid points out that the language in the new policy does not indicate FEMA is required to accept a broader ownership documentation standard, only that it “may.”¹³³⁵

These verification issues have been a longstanding concern between homeowners and FEMA following a disaster. The issue came to light in 2005 in the wake of Hurricane Katrina, where over 20,000 homeowners were denied assistance due to the agency not recognizing heirs’ property rights, according to a USDA report.¹³³⁶ While FEMA has updated its IHP policy guidelines in 2018, after María, to allow homeowners to self-certify, the new policies applied to islands and tribal lands, and did not necessarily extend to residents in the continental U.S.¹³³⁷ According to a statement to the Washington Post, a FEMA spokesperson stated that the agency recognizes heirs’ property as “a perennial issue” and will continue to require most survivors to prove ownership through formal means because “land ownership is recorded as a standard practice” throughout the continental U.S. and “self-certification of ownership increases the agency’s vulnerability” to possible fraudulent claims.¹³³⁸ In September 2021, FEMA issued a policy amendment memo that further expanded ownership and occupancy verification methods, including the use of self-certification of ownership and occupancy for applicants residing in mobile homes or travel trailers in the continental United States and for applicants whose

¹³³³ Ibid.

¹³³⁴ Sánchez Statement, at 3.

¹³³⁵ Perrigue Gomez Statement, at 4.

¹³³⁶ Scott Pippin, Shana Jones, and Cassandra Johnson Gaither, “Identifying Potential Heirs Property in the Southeastern United States,” *U.S. Dep’t of Agriculture*, Sept. 2017, https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs225.pdf.

¹³³⁷ See e.g., Office of Jon Ossoff and Office of Tim Scott, Letter to Secretary of Homeland Security Alejandro Mayorkas, U.S. Senate, Aug. 5, 2021, <https://www.ossoff.senate.gov/wp-content/uploads/2021/08/Sen.-Ossoff-Sen.-Scott-Letter-to-DHS.pdf>; Dreier and Ba Tran, “‘The Real Damage’ Why FEMA is denying aid to Black families that have lived for generations in the Deep South.”

¹³³⁸ Dreier and Ba Tran, “‘The Real Damage’ Why FEMA is denying aid to Black families that have lived for generations in the Deep South.”

ownership was passed down through heirship when no other formal ownership documentation exists.¹³³⁹

Being able to verify ownership of personal property, outside of one's home may also be difficult, especially post-disaster. Chrishelle Palay explained that

FEMA notes that, aside from fixing their homes, FEMA aid is also in place to help with cars that have been damaged or damaged belongings and all those things. In order to even go through the process, survivors must be able to present titles to cars, homes, documentation [] and be able to be there whenever the FEMA inspector shows up.¹³⁴⁰

The inspection process may also be a barrier for individuals seeking and applying for federal aid post-disaster. One study showed that after María, many survivors lacked telephone and/or internet access or had evacuated the Island which made it difficult to schedule or follow through with the required property inspections to get IHP assistance from FEMA.¹³⁴¹ For residents who were able to meet with inspectors, many reported that FEMA inspectors were not bilingual and did not speak Spanish and so could not conduct a thorough inspection, and thus residents' claims were denied.¹³⁴²

At the Commission's June briefing, David Bibo explained that in light of empirical studies showing that some disaster survivors struggle to apply for and receive the aid based on demographic and neighborhood composition, FEMA has launched an "equity review" of the IA program to ensure that all residents are being treated equitably.¹³⁴³ Further, representatives from the agency also stated that FEMA has launched an initiative to collect demographic data to better track and deliver disaster assistance.¹³⁴⁴ Leslie Saucedo, Director of the External Civil Rights Division in FEMA's Office of Equal Rights (OER) also explained that her office has developed a team or "cadre" that is now deployed during every disaster that offers civil rights guidance and technical advice to FEMA leadership.¹³⁴⁵ Saucedo explained that:

The support begins with the creation of a community assessment to identify protected groups and underserved or historically marginalized communities and support the development of a plan to respond to the unique needs and issues in a community.

¹³³⁹ FEMA, Response to Affected Agency Review, May 16, 2022 [on file].

¹³⁴⁰ Chrishelle Palay, Director, H.O.M.E. Coalition, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Aug. 20, 2020, at 13-14 [on file].

¹³⁴¹ García, "Deemed Ineligible: Reasons Homeowners in Puerto Rico Were Deemed Aid After Hurricane María."

¹³⁴² *Ibid.*

¹³⁴³ Bibo Testimony, *DC Briefing*, p. 51.

¹³⁴⁴ *Ibid.*, at 52.

¹³⁴⁵ Leslie Saucedo, Director, External Civil Rights Division, FEMA Office of Equal Rights, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Dec. 10, 2020, at 7 [on file].

For example, the assessment may identify limited English proficient communities to FEMA leaders, so that translation and interpretation services can be planned and promptly deployed. The cadre also conducts physical inspections of potential FEMA offices and activity sites and provides guidance to ensure physical accessibility. In addition, the cadre processes survivor requests for reasonable accommodation, engages in community outreach to understand and resolve concerns, and raises awareness of civil rights roles and responsibilities by distributing flyers and contact information for civil rights concerns.¹³⁴⁶

For a more in-depth discussion regarding FEMA's policy and procedural changes, including recent changes regarding heirship properties, see Chapter 4 of this report.

Challenges Faced by FEMA in Delivering Aid

As discussed, disasters strike on the local level. It is the role of the federal government, however, to provide aid when a disaster overtakes the capabilities of state and local officials to safely mitigate the consequences and protect impacted residents.¹³⁴⁷ FEMA, as the coordinating agency of the federal response to disasters, is responsible for directing relief and assistance to state and local partners as well as serve as the interagency coordinator to ensure that other federal agencies are fulfilling their requirements to survivors.¹³⁴⁸ The discussion of these efforts is discussed herein.

Coordination between FEMA and State, Local, and Tribal Governments

Coordination between state and local governments and the federal government officially begins when the President of the United States issues a major disaster declaration enabling the distribution of federal aid and resources.¹³⁴⁹ When a major disaster or other incident occurs, the governor or administrative head of the state or territory affected must request a disaster declaration from the President of the United States through the appropriate FEMA regional administrator.¹³⁵⁰ FEMA explained in its responses to the Commission's interrogatory that coordinating aid with state and local partners in responding to a disaster is a multistage process.

Once FEMA determines the state's needs (commodities, equipment, and/or personnel), FEMA deploys assets directly to the state and usually places those assets in a staging area until requested by the state. The state prepares a Resource Request Form (RRF) requesting federal support and submits the request to FEMA. FEMA reviews and validates the request and either fills the request from assets staged in the state and other

¹³⁴⁶ Ibid, at 7-8.

¹³⁴⁷ FEMA, "Overview of Local, State, and Federal Response to a Disaster: Unit 3 – Disaster Sequence of Events," in *State Disaster Management*, Jan. 2003, <https://training.fema.gov/emiweb/downloads/is208sdmunit3.pdf>.

¹³⁴⁸ Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and Related Authorities § 401(a), 42 U.S.C. § 5170.

¹³⁴⁹ FEMA "Overview of Local, State, and Federal Response to a Disaster: Unit 3 – Disaster Sequence of Events."

¹³⁵⁰ 42 U.S.C. § 5170; 44 C.F.R. §§ 206.35-206.36.

locations, or tasks other federal agencies to provide the support using a Mission Assignment. Normally, federal support provided by FEMA carries a 75 percent/25 percent cost share, meaning the state agrees to pay 25 percent of the cost of the federal support provided, with FEMA paying the remaining 75 percent.¹³⁵¹

Once FEMA releases federal commodities, supplies, and equipment, the state picks up the items requested and typically delivers them to Points of Distribution (PODs). In terms of commodities and supplies, local authorities determine the location and hours of operations of each POD. Local citizens go directly to the PODs to pick up needed supplies and commodities.¹³⁵²

Local Organizations

Community-based organizations and networks are in the best position to engage with and have more awareness of the unique needs of survivors.¹³⁵³ After Harvey's landfall in Texas, many organizations aided disaster survivors, several of which testified before the Commission. Texas Housers is a nonprofit working to understand government policies and practices involved with disaster recovery, and the recovery experience of low-income survivors, focusing on racial equity and civil rights.¹³⁵⁴ The Fifth Ward Community Redevelopment Corporation served more than 500 homes and 1,500 families with complete clean-outs, muck/gut,¹³⁵⁵ furniture moving, and providing additional supplies to remediate mold and other toxins caused by water damage, as well as repairs and unmet emergency financial needs.¹³⁵⁶ This work was in addition to working with families that served as part of a distribution of dry goods, personal items, non-perishables, and "go-boxes" equipped with mucking tools, contractor-grade trash bags, masks, gloves, and cleaning supplies for those that needed assistance but had limited supplies and resources.¹³⁵⁷ Texas RioGrande Legal Aid is the nation's second-largest legal aid provider and the largest in Texas, and from August 2017 through July 2019 the organization worked with approximately 2,900 survivors applying for legal assistance, with issues including family, housing, consumer, employment legal matters, FEMA and SBA applications and appeals, and title clearing for the GLO Homeowner's Assistance Program.¹³⁵⁸

The Commission also heard from local organizations leading the response to María in Puerto Rico. Ayuda Legal Puerto Rico provides legal and advocacy efforts around disaster assistance and recovery funds, supporting thousands of disaster survivors each year.¹³⁵⁹ Centro de

¹³⁵¹ FEMA Response to USCCR Interrogatory No. 12 at 24.

¹³⁵² *Ibid.*

¹³⁵³ Yentel Statement, at 11.

¹³⁵⁴ Orduña Statement, at 1.

¹³⁵⁵ Mucking and gutting is the first step in the rebuilding process, consisting of removing damaged belongings and construction materials and prepping the home for mold treatment, *see* <https://www.disasterready.org/muck-gut-guide>

¹³⁵⁶ Payton Statement, at 3.

¹³⁵⁷ *Ibid.*

¹³⁵⁸ Perrigue Gomez Statement, at 3.

¹³⁵⁹ Aubert Statement, at 1.

Periodismo Investigativo, or CPI, is a non-profit news organization with five journalists devoted to investigating the recovery process after hurricanes Irma and María.¹³⁶⁰ Taller Salud is a feminist grassroots organization dedicated to improving women's access to health care, reducing violence in community settings, and fostering economic growth in Loíza, Puerto Rico.¹³⁶¹ The organization conducted a community census throughout the town to understand the needs of residents, since "nobody knows communities better than community members themselves."¹³⁶²

Fundación Fondo de Acceso a la Justicia (FFAJ) is a non-profit foundation that, after María, created the Legal Emergency Fund with the purpose of providing free legal assistance to disaster survivors, particularly low-income families that were in imminent need of the housing assistance. They subsidized 20 non-profit organizations with more than 65 attorneys and notaries at law working in legal brigades throughout hundreds of communities in Puerto Rico.¹³⁶³ The municipality of San Juan prepared food for 26 community soup kitchens and food and water for 65 homes for older persons and care organizations.¹³⁶⁴ New York City Emergency Management, which arrived a week after María, established a robust distribution system with religious, community, and recreational leaders to provide food and water to 34 communities.¹³⁶⁵ Through assistance from Goya, Hispanic Federation, Chobani, Suiza Dairy, Tres Monjitas, and Chocolate Cortes, and food and water purchased at the municipal level, the municipality was able to meet local nutritional needs not met by the food provided by FEMA.¹³⁶⁶

Following María, the nonprofit Hispanic Federation began one of the largest private emergency relief efforts in Puerto Rico, raising and investing more than \$42 million in funding to provide grants to more than 130 local organizations and executing multiple initiatives.¹³⁶⁷ The organizations also partnered with the New York Governor's Office, Office of the NYC Mayor, and other New York City officials to charter a humanitarian relief flight to Puerto Rico three days after landfall.¹³⁶⁸ Within a month, they had reached 30 municipalities, and over the next few months, all municipalities had been reached, receiving an estimated 7.4 million pounds of nutritious food, water, and emergency supplies including solar lamps, water filters, and first aid.¹³⁶⁹ On October 27, the Hispanic Federation had provided the single largest aid package to San Juan at that time, of over 220,000 lbs.¹³⁷⁰ Charlotte Gossett Navarro, Puerto Rico Chief Director of Hispanic Federation, testified that while "federal funding should have been readily

¹³⁶⁰ Minet Statement, at 1.

¹³⁶¹ Rosario-Méndez Statement at 1.

¹³⁶² *Ibid.*, at 4.

¹³⁶³ River Statement, at 1.

¹³⁶⁴ Cruz Soto Statement, at 5-6.

¹³⁶⁵ *Ibid.*, at 5.

¹³⁶⁶ Cruz Soto Statement, at 5; *see also* Aubert Statement, at 7-8.

¹³⁶⁷ Navarro Statement, at 3.

¹³⁶⁸ *Ibid.*

¹³⁶⁹ *Ibid.*, at 4.

¹³⁷⁰ *Ibid.*

available for this work, groups had to rely on philanthropic efforts to fill major gaps in the response.”¹³⁷¹

Intergovernmental coordination

In its response to Harvey, FEMA coordinated with the U.S. Department of Health and Human Services, the U.S. Coast Guard, the U.S. Department of Housing and Urban Development, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Department of Energy, the U.S. Department of Defense, the U.S. Small Business Association, the Civil Air Patrol, the U.S. Department of Agriculture, the U.S. General Services Administration, the U.S. Department of Transportation, the Texas Workforce Commission, the American Red Cross, and more than 300 volunteer organizations.¹³⁷²

In administering relief following María, FEMA coordinated with the Department of Energy, the U.S. Coast Guard, the American Red Cross, the Corporation for National and Community Service, the U.S. Department of Agriculture, the U.S. Department of Defense, the Environmental Protection Agency, the Federal Aviation Administration, the Department of Interior, the Department of Health and Human Services, and the U.S. Postal Service.¹³⁷³

FEMA signed a host-state agreement with the state of Florida to support Puerto Rico’s evacuees, including some of the approximately 179,000 hurricane survivors that left Puerto Rico.¹³⁷⁴ FEMA notes that Florida was itself recovering from Hurricane Irma which had passed close to Puerto Rico and made landfall in Florida.¹³⁷⁵ The host-state agreement allowed local FEMA partners based in Florida to assist with the recovery efforts of Puerto Rican hurricane survivors.¹³⁷⁶

Hurricane Harvey

In Texas, state law designates mayors and county executives (known as County Judges in Texas) as the primary emergency management directors and grants them the authority to exercise the powers of the governor “on an appropriate local scale.”¹³⁷⁷ If local officials are unable to appropriately or fully respond to a disaster, disaster response moves upward from the local government to a regional Disaster District Committee Chairperson, then to the state level Texas

¹³⁷¹ Ibid.

¹³⁷² FEMA, “Historic Disaster Response to Hurricane Harvey in Texas,” Sept. 22, 2017,

<https://www.fema.gov/press-release/20210318/historic-disaster-response-hurricane-harvey-texas>.

¹³⁷³ FEMA, “Federal Agency Update on Hurricane María Response and Relief Operations,” Sept. 26, 2017,

<https://www.fema.gov/press-release/20210318/federal-agency-update-hurricane-maria-response-and-relief-operations>.

¹³⁷⁴ FEMA, *2017 Hurricane Season After-Action Report*, at 42.

¹³⁷⁵ Ibid.

¹³⁷⁶ Ibid.

¹³⁷⁷ Tex. Gov’t Code § 418.1015

Department of Emergency Management, and eventually to FEMA at the federal level.¹³⁷⁸ FEMA notes that when a Presidential Disaster Declaration is issued for any part of Texas, FEMA will work directly with the Texas Department of Emergency Management to identify required assistance.¹³⁷⁹ After Harvey made landfall, FEMA reported working in Texas alongside the Texas Department of Emergency Management, as well as with “local agencies, nonprofit and faith-based organizations, and the private sector in responding to the devastation caused by the storm.”¹³⁸⁰

FEMA told the Commission that many of the challenges the agency faced were a result of the impacts of the storm itself.¹³⁸¹ For example, FEMA reported that flooding of major roads on the Texas-Louisiana and Texas-Mississippi borders required FEMA to seek longer land routes to move materials into the state.¹³⁸² Additionally, flooding closed major airports in the Houston area, limiting the ability to evacuate people in the area and fly goods into the affected zone.¹³⁸³ FEMA told the Commission that these closures did not impact FEMA’s pre-planned delivery or distribution of aid.¹³⁸⁴

The Texas General Land Office (GLO) developed the Partial Repair and Essential Power for Sheltering (PREPS) program, which provided emergency repairs and power restoration to single family homes.¹³⁸⁵ FEMA awarded the GLO over \$76 million as reimbursement for its service (as FEMA’s PA funding).¹³⁸⁶ Through the recovery process, PREPS provided repair services to more than 10,000 Texas homes.¹³⁸⁷ FEMA reported that despite its financial support to the GLO, City of Houston, and Council of Governments, there were inadequacies in providing and repairing housing.¹³⁸⁸ One example that FEMA provided to the Commission was that after FEMA had ordered 1,000 manufactured housing units, Texas informed FEMA that it would only accept manufactured housing units manufactured in the State of Texas.¹³⁸⁹ This caused FEMA to have a surplus of manufactured housing units unable to be used by those in need.¹³⁹⁰

¹³⁷⁸ See, FEMA Response to USCCR Interrogatory No. 12 at 23-24.

¹³⁷⁹ Ibid.

¹³⁸⁰ Ibid.

¹³⁸¹ FEMA Response to USCCR Interrogatory No. 12 at 25-26.

¹³⁸² Ibid.

¹³⁸³ Ibid.

¹³⁸⁴ Ibid.

¹³⁸⁵ FEMA, “FEMA Grants More than \$76 Million to the Texas General Land Office for PREPS Program Reimbursement,” Jul. 6, 2018, <https://www.fema.gov/news-release/20200220/fema-grants-more-76-million-texas-general-land-office-preps-program>.

¹³⁸⁶ Ibid.

¹³⁸⁷ The Texas General Land Office, “PREPS Repairs Now Complete on More Than 10,000 Texas Homes,” Mar. 22, 2018, <https://www.glo.texas.gov/the-glo/news/press-releases/2018/march/preps-repairs-now-complete-on-more-than-10000-texas-homes.html>.

¹³⁸⁸ FEMA Response to USCCR Interrogatory No. 12 at 26.

¹³⁸⁹ Ibid.

¹³⁹⁰ Ibid.

The Commission heard testimony that federal organizations such as FEMA, as well as state and local offices such as the GLO and the Houston City government, sometimes do not work well in collaboration with local nonprofit groups.¹³⁹¹ Ben Hirsch of West Street Recovery stated that the main mode of communication used by governments is “inform and notify” when it should instead be “respond and listen.”¹³⁹² However, in Harris County, county officials initiated a Long-Term Recovery Committee that brought together government, private, and non-profit sectors, ultimately assisting over one million individuals and over 74,000 households with non-FEMA aid.¹³⁹³

Hurricane María

The National Disaster Recovery Framework makes local governments primarily responsible for leading pre-disaster recovery efforts. According to FEMA, however, the agency “essentially served as the first responder in the early response efforts in Puerto Rico,” and provided many services “typically provided by territorial or local governments,” including power restoration, debris removal, and commodity distribution.¹³⁹⁴ FEMA generally coordinates with state and local governments to manage commodity distribution, but Puerto Rico “did not have the same level of preparedness to manage a commodity distribution mission.”¹³⁹⁵ As a result, FEMA took a more direct role than it usually does in commodity distribution.¹³⁹⁶

FEMA worked closely with the Central Office for Recovery, Reconstruction, and Resilience (COR3) to fund projects in Puerto Rico.¹³⁹⁷ Public assistance funding is obligated to nonprofits, municipalities, and local agencies through COR3.¹³⁹⁸ FEMA also worked with the Puerto Rico Aqueduct and Sewer Authority (PRASA) and with one division of COR3, to establish procedures for expending public assistance grant funds.¹³⁹⁹

After the 2017 hurricane season, DHS’ Inspector General found that FEMA did not properly provide oversight to ensure that COR3 and PRASA established policies to account for public assistance grant funds.¹⁴⁰⁰ As a result, PRASA did not adhere to established procedures to

¹³⁹¹ Hirsch Statement, at 1.

¹³⁹² Ibid.

¹³⁹³ Sánchez Statement, at 2.

¹³⁹⁴ Joint FEMA Statement, at 10-11.

¹³⁹⁵ FEMA, *2017 Hurricane Season After-Action Report*, at 29.

¹³⁹⁶ Ibid.

¹³⁹⁷ FEMA, “FEMA and COR3 Obligate an Additional \$37.8 Million for Recovery Work in Puerto Rico,” Mar. 10, 2020, <https://www.fema.gov/news-release/20200514/fema-and-cor3-obligate-additional-378-million-recovery-work-puerto-rico>.

¹³⁹⁸ FEMA, “Progress and Innovation in Puerto Rico: FEMA, COR3 and Other Federal Partners Continue Historic Recovery Mission Two Years After Hurricanes Irma and María,” Sept. 12, 2019, <https://www.fema.gov/press-release/20210318/progress-and-innovation-puerto-rico-fema-cor3-and-other-federal-partners>.

¹³⁹⁹ DHS OIG, *Capacity Audit of FEMA Grant Funds Awarded to the Puerto Rico Aqueduct and Sewer Authority*, Apr. 9, 2020, <https://www.oig.dhs.gov/sites/default/files/assets/2020-04/OIG-20-24-Apr20.pdf>.

¹⁴⁰⁰ Ibid.

document the correct capacity size and rate of its equipment, and it did not ensure that each vendor had a certificate of eligibility prior to receiving an award.¹⁴⁰¹ PRASA overstated its reimbursement claim for the use of generators by \$72,304.¹⁴⁰²

FEMA identified several areas of difficulty in responding to María as compared to disaster response in other areas of the United States. In written testimony to the Commission, FEMA noted several challenges to the disaster response effort:

Hurricane María devastated Puerto Rico and the U.S. Virgin Islands' fragile critical infrastructure. It was the first Category 4 storm to make landfall on Puerto Rico in 85 years. Following the storm, every airport and port was closed, only 5 percent of the population had access to cell phone service, and the main island was without power, leaving 3.7 million residents without electricity. In addition, the storm disrupted critical supply routes from Puerto Rico to the U.S. Virgin Islands, resulting in the longest sustained air mission to deliver resources in FEMA history.¹⁴⁰³

In 2018, the GAO found that Puerto Rico was unprepared for a major hurricane, writing:

Puerto Rico and the U.S. Virgin Islands had engaged in disaster preparedness exercises prior to Hurricane María; however, neither had recently experienced nor stockpiled the resources necessary for a hurricane of that magnitude. For example, Puerto Rico officials said their emergency plans allowed the local government to respond effectively to Hurricane Irma (e.g., evacuating residents, purchasing food, and securing their homes). However, their plans were insufficient for the magnitude of Hurricane María which made landfall 2 weeks later. Specifically, Puerto Rico officials had not considered that a hurricane would cause a loss of power for as long as Hurricane María did.¹⁴⁰⁴

The GAO did note that María was the strongest hurricane to hit Puerto Rico since 1928, and that the infrequency of such strong storms making landfall on Puerto Rico may have contributed to insufficient planning and stockpiling of resources.¹⁴⁰⁵ Local officials in Puerto Rico claimed that limited space on the Island did not allow for enough supplies to be stockpiled before María made landfall.¹⁴⁰⁶

¹⁴⁰¹ Ibid, at 4.

¹⁴⁰² Ibid.

¹⁴⁰³ FEMA Joint Statement, at 7.

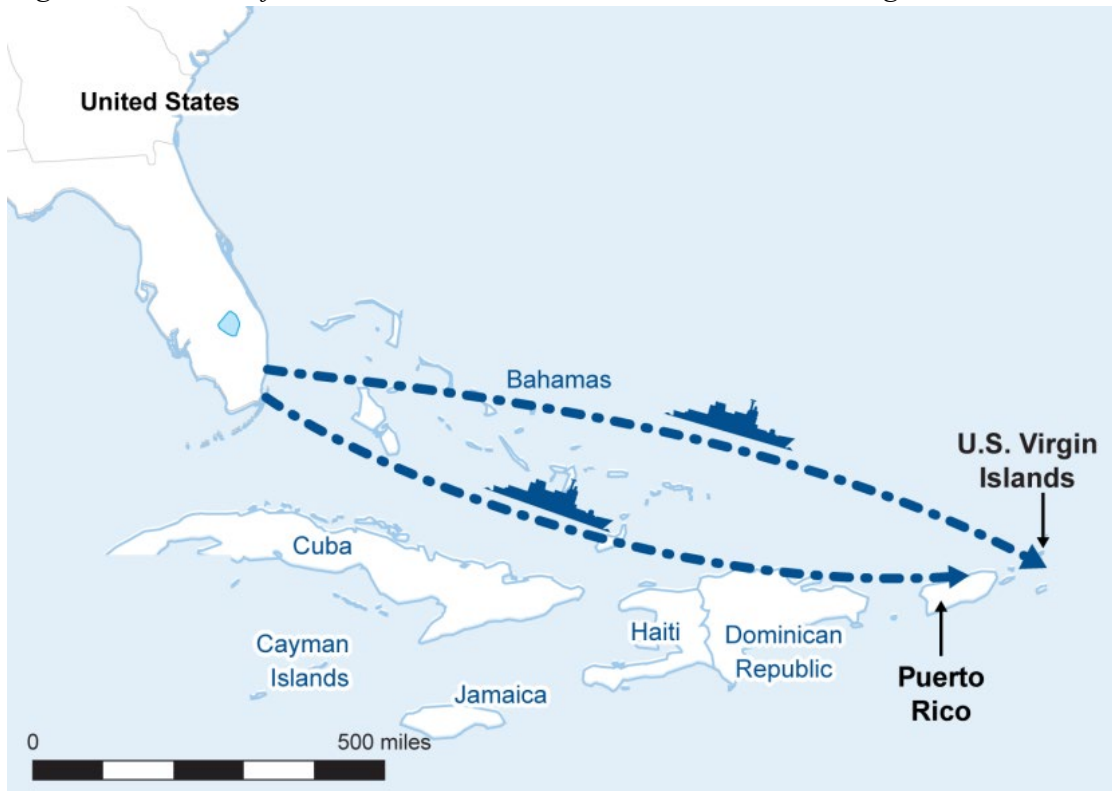
¹⁴⁰⁴ GAO, *2017 Hurricanes and Wildfires: Initial Observations on the Federal Response and Key Challenges*, pp. 30-31.

¹⁴⁰⁵ Ibid, at 31.

¹⁴⁰⁶ Ibid.

FEMA noted that the physical distance (illustrated in Figure 14, below) from the U.S. mainland had a significant impact on FEMA’s ability to deliver resources to the Island, and that conditions on the ground in Puerto Rico required FEMA “to deviate from the logistics model for commodity delivery and distribution.”¹⁴⁰⁷

Figure 14 Distance from U.S. Mainland to Puerto Rico and U.S. Virgin Islands



Source: U.S. Gov’t Accountability Office, GAO-18-472, 2017 Hurricanes and Wildfires: Initial Observations on the Federal Response and Key Challenges, p. 30 (Sept. 2018) <https://www.gao.gov/assets/gao-18-472.pdf>.

Comparatively, when Harvey in Texas flooded major roads, FEMA could find alternative land routes to deliver resources to the disaster zone, whereas FEMA was unable to use alternate routes in the case of María because every maritime port and airport was closed in Puerto Rico after landfall.¹⁴⁰⁸ Additionally, FEMA had difficulty moving goods within and around the Island as FEMA’s contract truck drivers in Puerto Rico were also disaster survivors themselves.¹⁴⁰⁹ In testimony to the Commission, Chris Currie of the GAO wrote that the GAO made similar findings that logistical challenges hampered the response to the hurricane once María left Puerto Rico and the U.S. Virgin Islands.¹⁴¹⁰ Currie wrote that:

¹⁴⁰⁷ FEMA Joint Statement, at 7.

¹⁴⁰⁸ See, *supra* note 872; FEMA Joint Statement at 7.

¹⁴⁰⁹ FEMA Joint Statement, at 7.

¹⁴¹⁰ Currie Statement at 4.

FEMA faced challenges in getting key personnel and resources to the territories before and after the hurricanes made landfall, and with distributing those resources to survivors. Under typical disaster operations, responders are moved to the disaster response area via commercial travel options – or as in Texas and Florida, on roadways from nearby states, according to FEMA officials. However, limitations on air travel due to capacity constraints and power outages meant that FEMA had to coordinate and mobilize agency partners to provide chartered air transportation until commercial travel options resumed.¹⁴¹¹

To alleviate some of the logistical challenges in Puerto Rico, FEMA stated that it:

worked extensively with private sector entities, NGOs, and other Federal agencies to procure commodities and then coordinated the use of air and maritime transportation assets to move them. FEMA worked closely with [the U.S. Department of Defense] on airlifts; contracted with commercial air carriers; and used its existing maritime shipping contracts to transport resources from the mainland to the territories.¹⁴¹²

Notably, FEMA also claims that the Puerto Rican government had “limited capacity to navigate FEMA’s array of programs” before and after María.¹⁴¹³ To mitigate FEMA’s concerns, the agency wrote that it has provided training and technical assistance to officials in Puerto Rico about FEMA’s assistance programs.¹⁴¹⁴

Further complicating the recovery process is the reimbursement requirement for certain FEMA funds. In Puerto Rico, municipal budgets are facing drastic reductions – reducing almost 15 percent from 2015 through 2018.¹⁴¹⁵ If funds need to be spent in order to be reimbursed, but available funds are limited, municipalities have to be strategic as to how to invest reduced resources.¹⁴¹⁶ This is specifically a concern in Puerto Rico since most of the 78 municipalities do not have enough in their budgets to begin an infrastructure project.¹⁴¹⁷

Communication outages in Puerto Rico also caused difficulties in obtaining infrastructure data and made it difficult for FEMA to gain situational awareness regarding the status of Puerto Rico’s infrastructure systems.¹⁴¹⁸ FEMA worked with the DHS and other federal agencies to provide Spanish-speaking staff, who communicated with the 78 Puerto Rico mayors; the staff

¹⁴¹¹ Ibid.

¹⁴¹² FEMA Joint Statement, at 7.

¹⁴¹³ FEMA Response to USCCR Interrogatory No. 12 at 22-23.

¹⁴¹⁴ Ibid.

¹⁴¹⁵ Miranda Statement, at 3.

¹⁴¹⁶ Ibid.

¹⁴¹⁷ Navarro Statement, at 13.

¹⁴¹⁸ FEMA, *2017 Hurricane Season After-Action Report*, at 34.

spoke to the mayors several times per week and relayed information back to FEMA.¹⁴¹⁹ FEMA used crowdsourcing to gain information on hospital statuses, road and bridge closures, and food and fuel availability throughout Puerto Rico.¹⁴²⁰ The U.S. Army Corps of Engineers “provided temporary emergency power, temporary roofing, debris management, infrastructure assessment, critical public facility restoration and temporary housing.”¹⁴²¹

Extensive road damage also made it difficult for FEMA to travel across the Island to assess damage.¹⁴²² In response, FEMA used helicopters to visit and assess critical infrastructure across the Island.¹⁴²³ Hospitals in Puerto Rico were also hampered in their ability to provide care due to damage and prolonged power outages.¹⁴²⁴ Intermittent supplies and deliveries of fuel led to backup power generators failing.¹⁴²⁵ To provide emergency healthcare to the Island, the U.S. Department of Defense set up temporary hospitals, in addition to dispatching the Navy hospital ship USNS Comfort to Puerto Rico,¹⁴²⁶ which arrived on October 3.¹⁴²⁷ However, the admissions process was either unclear or nonexistent, as the Commission heard that “the U.S. Comfort would only deal with certain types of ailments,”¹⁴²⁸ such as trauma, but individuals with ailments such as diabetic shock or renal failure would not be admitted.¹⁴²⁹ The New York Times reported that the ship was equipped with 250 hospital beds, but that “over its 53-day deployment, which included travel to and from the Island, it admitted an average of only six patients a day, or 290 in total.”¹⁴³⁰ An additional 1,625 people were treated on the ship as outpatients.¹⁴³¹ Puerto Rican doctors indicated that the Comfort could have been of enormous help directly after the storm, because at first many hospitals were damaged or shut down.¹⁴³² However, the ship was unable to receive unscreened patients, and doctors in areas without working phones found it difficult to refer patients, or even understand the type of patients the Comfort would or could treat.¹⁴³³ On

¹⁴¹⁹ Ibid.

¹⁴²⁰ Ibid.

¹⁴²¹ GAO, *2017 Hurricanes and Wildfires: Initial Observations on the Federal Response and Key Challenges*, at 121.

¹⁴²² FEMA, *2017 Hurricane Season After-Action Report*, at 34.

¹⁴²³ Ibid.

¹⁴²⁴ Robin Respaut and Dave Graham, “Battered Puerto Rico hospitals on life support after Hurricane María,” REUTERS, Sept. 24, 2017, <https://www.reuters.com/article/us-storm-maria-puertorico-hospitals/battered-puerto-rico-hospitals-on-life-support-after-hurricane-maria-idUKKCN1BZ13S>.

¹⁴²⁵ Ibid.

¹⁴²⁶ GAO, *2017 Hurricanes and Wildfires: Initial Observations on the Federal Response and Key Challenges*, at 121.

¹⁴²⁷ Frances Robles and Sheri Fink, “Amid Puerto Rico Disaster, Hospital Ship Admitted Just 6 Patients a Day,” *The New York Times*, Dec. 6, 2017, <https://www.nytimes.com/2017/12/06/us/puerto-rico-hurricane-maria-hospital-ship.html>.

¹⁴²⁸ Cruz Soto Testimony, *Puerto Rico Briefing*, at 70.

¹⁴²⁹ Ibid, at 75.

¹⁴³⁰ Robles and Fink, “Amid Puerto Rico Disaster, Hospital Ship Admitted Just 6 Patients a Day.”

¹⁴³¹ Ibid.

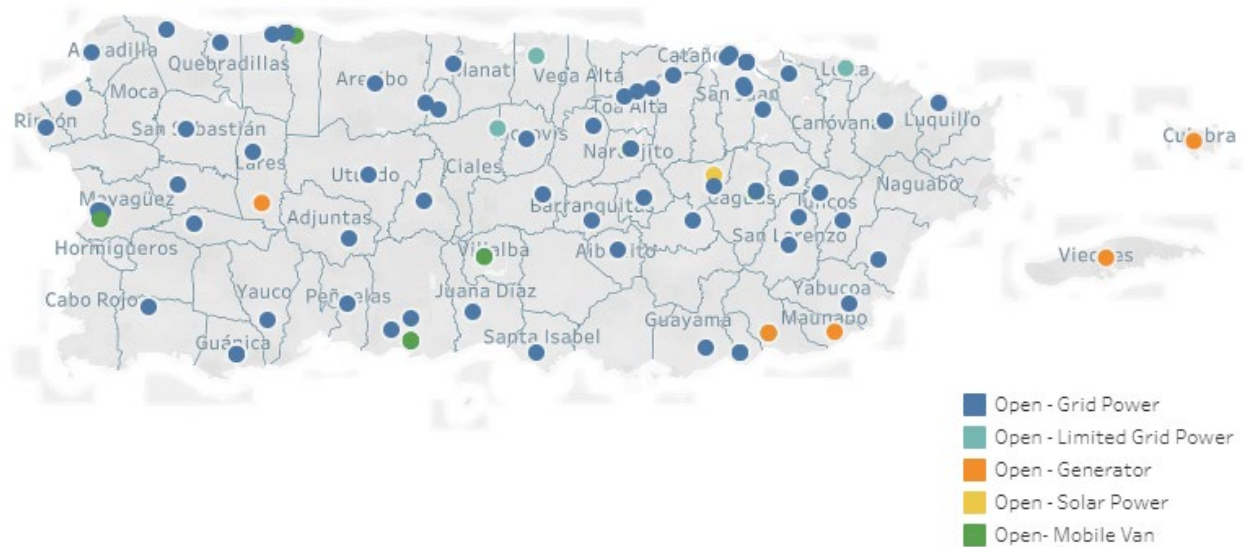
¹⁴³² Ibid.

¹⁴³³ Ibid.

November 15, the *Comfort* left the dock with plans to restock at sea and resume seeing patients, but on November 17, “the ship was ordered home, for good, without warning.”¹⁴³⁴

Six months after the hurricane, healthcare facilities in Puerto Rico still faced challenges in returning to pre-hurricane operations.¹⁴³⁵ Information from the Asociación de Salud PriMaría de Puerto Rico shows that 11 percent of the territory’s healthcare centers remained without consistent power six months after María.¹⁴³⁶

Figure 15 Operational Status of Health Centers in Puerto Rico (as of March 13, 2018)



© 2021 Mapbox © OpenStreetMap

Source: Kaiser Family Foundation, *Health Centers in Puerto Rico: Operational Status after Hurricane María*, (Mar. 16, 2018) <https://www.kff.org/medicaid/fact-sheet/health-centers-in-puerto-rico-operational-status-after-hurricane-maria/> (accessed Sept. 2, 2021).

¹⁴³⁴ Ibid.

¹⁴³⁵ Kaiser Family Foundation, *Health Centers in Puerto Rico: Operational Status after Hurricane María*, (Mar. 16, 2018) <https://www.kff.org/medicaid/fact-sheet/health-centers-in-puerto-rico-operational-status-after-hurricane-maria/> (accessed Sept. 2, 2021).

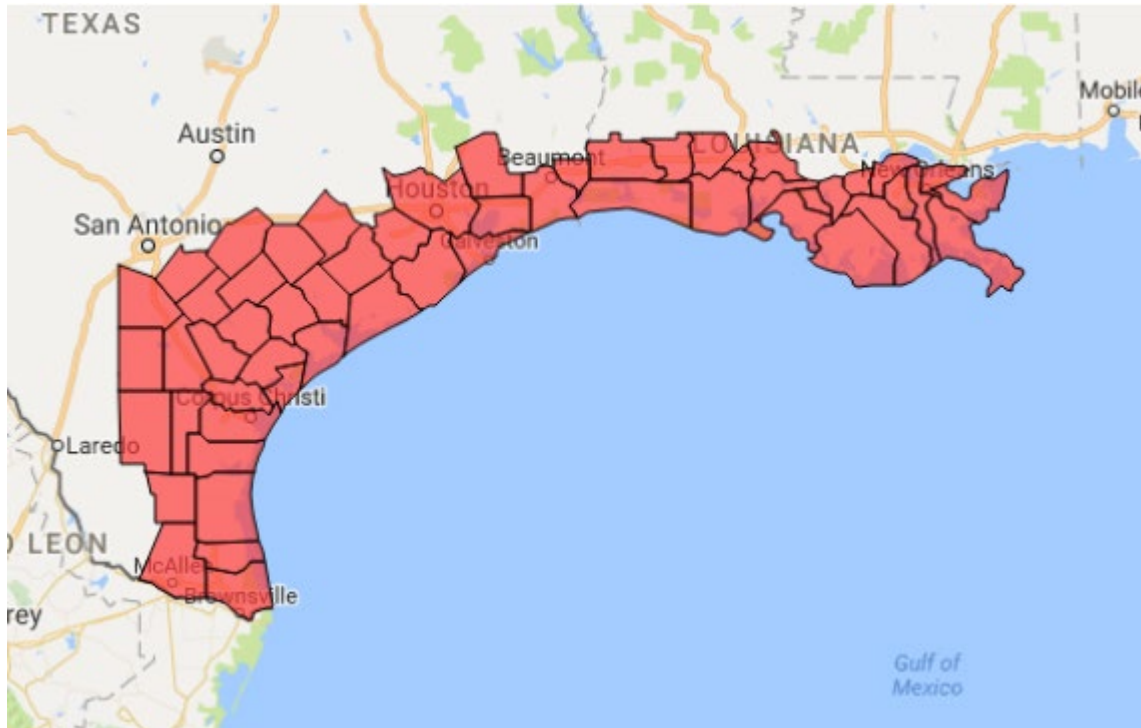
¹⁴³⁶ Ibid.

Telecommunications

Hurricane Harvey

One day after Harvey made landfall in Texas, 4.1 percent of cell sites¹⁴³⁷ were out throughout the entirety of the area affected by Harvey, including all or parts of 55 counties in Texas and Louisiana.¹⁴³⁸

Figure 16 Texas and Louisiana Counties Communication Outages (of August 27, 2017)



Source: Federal Communications Comm'n, "Communications Status Report for Areas Impacted by Tropical Storm Harvey," Aug. 27, 2017, p. 1.

The Federal Communications Commission reported that more than 50 percent of cell sites were out in Aransas, Calhoun, Refugio, and San Patricio counties in Texas one day after landfall.¹⁴³⁹ The hardest hit counties in Texas were Aransas and Calhoun, with 94.7 percent and 85.2 percent of cell sites out in each county, respectively.¹⁴⁴⁰

¹⁴³⁷ "A cell site is defined as the entire set of equipment needed to receive and transmit radio signals for cellular voice and data transmission." GAO, *Telecommunications: FCC Assisted in Hurricane Maria Network Restoration, but a Clarified Disaster Response Role and Enhanced Communication are Needed*, p. 2 at note 5, (Apr. 2021) <https://www.gao.gov/assets/gao-21-297.pdf>.

¹⁴³⁸ FCC, *Communications Status Report for Areas Impacted by Tropical Storm Harvey*, Aug. 27, 2017, p. 4, <https://www.fcc.gov/document/communications-status-report-areas-impacted-ts-harvey>.

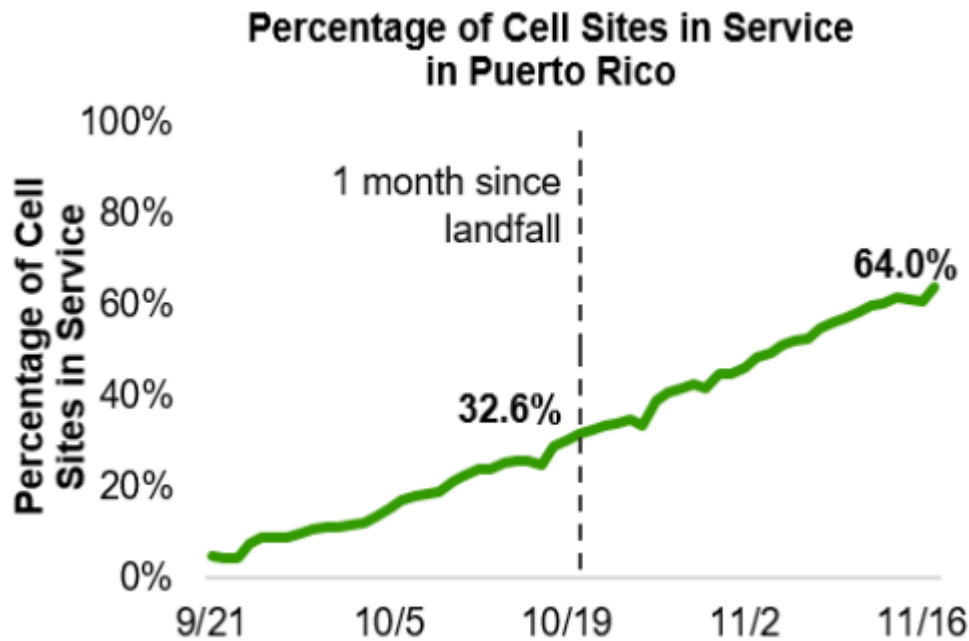
¹⁴³⁹ *Ibid*, at 3.

¹⁴⁴⁰ *Ibid*, at 4.

Hurricane María

Following María, 95 percent of Puerto Rico’s cell sites were out, and outages continued for months after the initial landfall.¹⁴⁴¹ One month after the storm, 32.6 percent of cell sites were in service in Puerto Rico, and approximately two months after the storm 64 percent of cell sites were operational.¹⁴⁴²

Figure 17 Percentage of Cell Sites in Service in Puerto Rico



Source: FEMA, “2017 Hurricane Season FEMA After-Action Report,” July 12, 2018, p. 34.

The outages impacted FEMA’s crisis management system and the National Emergency Management Information System, which FEMA uses to process survivor registrations.¹⁴⁴³ FEMA attempted to overcome these issues by using mobile satellite and mobile radio resources to coordinate logistics but faced additional challenges as some satellite phones did not work properly in the Caribbean and some staff did not know how to operate them.¹⁴⁴⁴

¹⁴⁴¹ FEMA, *2017 Hurricane Season After-Action Report*, at 34.

¹⁴⁴² *Ibid.*

¹⁴⁴³ *Ibid.*

¹⁴⁴⁴ *Ibid.*, at 35.

Compliance Efforts with the Stafford Act and Title VI

As noted above, the Stafford Act and 44 CFR § 206.11(b) require that all personnel carrying out Federal major disaster or emergency assistance functions, including the distribution of supplies, the processing of the applications, and other relief and assistance activities, to perform their work in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status. This requirement applies to FEMA. Title VI prohibits intentional discrimination by FEMA recipients of federal financial assistance, including states and private entities, and prohibits recipients from distributing assistance or providing services in a manner that has a disparate impact on individuals because of their race, color, or national origin. It is the policy of FEMA's External Civil Rights Division (ECRD) to ensure non-discrimination and equity in program delivery or activities and that disaster response and recovery efforts are conducted in compliance with Civil Rights laws and policies.¹⁴⁴⁵ The subsequent section includes a summary of the complaints received by the FEMA.

As discussed above, witnesses and panelists consistently testified that Spanish-speaking Puerto Ricans received disproportionately lower amounts of assistance for María recovery than English-speaking mainland Americans received.¹⁴⁴⁶ Given that Puerto Rico's residents are almost entirely Latinx, the territory's official languages include Spanish, and many Puerto Ricans speak limited English,¹⁴⁴⁷ testimony shows that FEMA's lower levels of assistance to María survivors failed to comply with the principles underlying Title VI and 44 CFR § 7.5, which prohibits disparate treatment based on race, national origin, and linguistic characteristics in clear violation of federal court precedent¹⁴⁴⁸ and EEOC Guidance.¹⁴⁴⁹ In fact, the 60 percent denial rate for assistance for María survivors¹⁴⁵⁰ became the subject of a proposed legislation from Representative Adriano Espaillat (NY-13), who introduced the Housing Victims of Major Disasters Act in the House.¹⁴⁵¹

FEMA explained to the Commission that it employs a multi-pronged approach in an effort to protect civil rights during responses to natural disasters. Beginning with the response to Harvey,

¹⁴⁴⁵ See <https://www.fema.gov/about/offices/equal-rights/civil-rights>.

¹⁴⁴⁶ See, *supra* notes 1189-1192.

¹⁴⁴⁷ *Zappa v. Cruz*, 30 F.Supp.2d 123, 125 (D.Puerto Rico,1998) noting that in Puerto Rico “Spanish and English are established as the official languages...”)

¹⁴⁴⁸ Federal courts have recognized that language is closely tied to national origin and that English-only policies may cause employees to feel devalued, humiliated, and may even, in some cases, give rise to a hostile work environment. See *Reyes v. Pharma Chemie, Inc.*, 890 F.Supp.2d 1147, 1159 (D.Neb.,2012) citing to *Hernandez v. New York*, 500 U.S. 352, 371, (1991). See also *Garcia v. Gloor*, 618 F.2d 264, 268 (C.A.Tex., 1980) (“Language may be used as a covert basis for national origin discrimination.”)

¹⁴⁴⁹ See EEOC's Enforcement Guidance, <https://www.eeoc.gov/laws/guidance/eeoc-enforcement-guidance-national-origin-discrimination>.

¹⁴⁵⁰ See, *supra* note 1191.

¹⁴⁵¹ See Senator Elizabeth Warren (May 31, 2018) Press Release, <https://www.warren.senate.gov/newsroom/press-releases/senators-introduce-bill-to-provide-stable-housing-for-hurricane-survivors> (noting that “We know that FEMA has only approved 40% of Individual and Household grants, citing this as an issue.”)

FEMA reorganized its Office of Equal Rights (OER), creating an External Civil Rights Division “to oversee external civil rights functions, including policy, training, complaints processing, compliance reviews, and community outreach.”¹⁴⁵² Prior to this reorganization, OER deployed a Cadre of Reservists during disasters with an 80 percent focus on internal equal employment opportunity focus and a 20 percent focus on civil rights issues faced by disaster survivors.¹⁴⁵³ After the reorganization, the Cadre of Reservists maintains a focus on external civil rights compliance and enforcement efforts.¹⁴⁵⁴

During both Harvey and María, FEMA reported that it deployed the Civil Rights Cadre to the disaster response zones.¹⁴⁵⁵ FEMA deployed civil rights leads, advisors, and specialists during Harvey.¹⁴⁵⁶ FEMA stated that it maintains an ongoing presence of 15 Civil Rights Cadre members in Puerto Rico in the aftermath of María.¹⁴⁵⁷ FEMA reported deploying “civil rights leads, advisors, physical accessibility specialists, civil rights specialists and civil rights sign language interpreters during Hurricane María.”¹⁴⁵⁸ According to FEMA, at the start of the recovery response to María, the Cadre provided a community assessment to leadership identifying which communities ranked high on the CDC’s Social Vulnerability Index for incorporation in the agency’s strategic planning.¹⁴⁵⁹

In its written statement to the Commission, FEMA explained that in efforts to ensure a better understanding of civil rights responsibilities in delivering FEMA-wide programs, OER deployed staff to provide additional training for Disaster Case Managers and operational leadership.¹⁴⁶⁰ One practice that Cadre staff implemented was publishing the “Civil Rights Notice” and a process regarding how to request reasonable accommodations in applicable languages at every facility; in addition to working with FEMA’s External Affairs to ensure all program content is translated into required languages for survivors and applicants. The team has had engagement and participation in over 1,000 speaker bureau activities held in communities across Puerto Rico and throughout the 78 municipalities to ensure community outreach.¹⁴⁶¹

The Office for Civil Rights and Civil Liberties (CRCL) at DHS received a discrimination complaint against FEMA alleging FEMA’s method of distributing resources resulted in disparate resource allocation following Hurricane Harvey.¹⁴⁶² The complaint was initiated by a

¹⁴⁵² Joint FEMA Statement, at 9.

¹⁴⁵³ *Ibid.*

¹⁴⁵⁴ *Ibid.*, at 9.

¹⁴⁵⁵ *Ibid.*, at 10.

¹⁴⁵⁶ *Ibid.*, at 9.

¹⁴⁵⁷ *Ibid.*, at 10.

¹⁴⁵⁸ *Ibid.*

¹⁴⁵⁹ *Ibid.*

¹⁴⁶⁰ *Ibid.*

¹⁴⁶¹ *Ibid.* (internal citations omitted).

¹⁴⁶² *Ibid.*, at 8.

nongovernmental organization and alleged in part that a predominately Black neighborhood was provided only one FEMA housing trailer despite the city's determination that many homes in the neighborhood were "substantially damaged," and there appeared to be little reconstruction work underway.¹⁴⁶³ In comparison, a predominately White, more affluent nearby city "was bustling with contractors gutting and repairing houses," and had an abundance of FEMA temporary housing trailers.¹⁴⁶⁴ The Office of Equal Rights and FEMA responded to the complaint with written information and by providing FEMA witnesses for interviews; CRCL ultimately closed the complaint as a result of being unable to substantiate the allegations.¹⁴⁶⁵ Another CRCL investigation involved a complaint alleging language access concerns related to Hurricane Harvey and FEMA housing inspectors. In February 2022, CRCL issued four recommendations regarding language access.¹⁴⁶⁶

FEMA's Office of Equal Rights (OER) receives contacts from disaster survivors and members of the public alleging FEMA or a recipient of FEMA-financial assistance has violated their civil rights, and OER conducts a limited inquiry of each contact to further understand the allegation, FEMA's potential jurisdiction, and any potential referral to state or other federal partners.¹⁴⁶⁷ FEMA OER attempts to resolve all contacts or allegations prior to the filing of a civil rights complaint and according to FEMA is in many instances successful because the contact merely required additional information or assistance in the application process and then withdraws or requests no additional action be taken.¹⁴⁶⁸

The Stafford Act requires FEMA to establish eligibility criteria for the Individuals and Households Program. FEMA is required to

include provisions for ensuring that . . . the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination. . .¹⁴⁶⁹ [FEMA] shall prescribe rules and regulations. . . including criteria, standards, and procedures for determining eligibility for assistance¹⁴⁷⁰ [and FEMA] shall issue rules which provide for the fair and impartial consideration of [IHP] appeals.¹⁴⁷¹

¹⁴⁶³ Ibid, at 9.

¹⁴⁶⁴ Ibid.

¹⁴⁶⁵ Ibid, at 9 (internal citations omitted).

¹⁴⁶⁶ U.S. Dep't of Homeland Security Office for Civil Rights and Civil Liberties, Response to Affected Agency Review, May 25, 2022 [on file].

¹⁴⁶⁷ Commission Correspondence with FEMA, Oct. 19, 2021 [on file].

¹⁴⁶⁸ Ibid.

¹⁴⁶⁹ 42 U.S.C. § 5151(a)

¹⁴⁷⁰ 42 U.S.C. § 5174(j)

¹⁴⁷¹ 42 U.S.C. § 5189a(c)

However, the Commission received testimony that FEMA consistently relies on unpublished rules in the administration of IHP. Brittany Perrigue Gomez of Texas RioGrande Legal Aid explained:

FEMA's published rules are so vague that the hundreds of employees and inspectors who apply those rules fail to do so consistently, resulting in the inequitable distribution of critical funds to disaster survivors...FEMA also uses unpublished rules to instruct inspectors, who are not required to have any prior construction experience or knowledge, on how to determine whether damage observed after a disaster was actually caused by the disaster. FEMA considers inspectors to be fact finders and not make eligibility determinations, but in reality, inspectors make eligibility determinations based on the damage they choose to catalog during an inspection. Because there is no published standard of what is categorized as disaster caused damage, inspections are highly subjective and vulnerable to implicit bias. This can be seen in FEMA's own records when a home is marked as having disaster caused damage but also deferred maintenance, without further explanation, resulting in a denial of housing assistance. This was true after Hurricane Harvey, and it remains true today.¹⁴⁷²

The FEMA National Advisory Council report from November 2020 concluded that FEMA does not meet the equity requirements of the Stafford Act.¹⁴⁷³ The report went on to state that:

While it is not the role of FEMA to dismantle a series of systems that cause inequity, it is within the role of FEMA to recognize these inequities (and the disparities caused by them) and ensure that existing or new FEMA programs, policies, and practices do not exacerbate them. Further, as state and local emergency management agencies are also seeking guidance on how best to incorporate equity-centered principles in their outreach and work, FEMA has an opportunity to serve as a standard bearer.¹⁴⁷⁴

Procedures that may have a disparate impact on survivors with limited English proficiency would not meet the Stafford Act's requirement for relief activities to be equitable and impartial.¹⁴⁷⁵ The Commission heard many panelists describe inequitable relief as a result of important documentation or denial letters not being translated into Spanish, or personnel not being fluent in Spanish or sign language as needed.¹⁴⁷⁶ During public forums, FEMA officials admitted they were not properly prepared and lacked the staffing capacity and Spanish-speaking

¹⁴⁷² Perrigue Gomez Statement, at 5-6.

¹⁴⁷³ FEMA, *National Advisory Council Report to the Administrator*, at 12.

¹⁴⁷⁴ *Ibid*, at 11.

¹⁴⁷⁵ 42 U.S.C. § 5151.

¹⁴⁷⁶ Perrigue Gomez Testimony, *Texas Briefing*, pp. 48-49; Navarro Statement, at 18; *see, supra* notes 829, 1118, 1127-1128, 1284-1290.

staff necessary to properly support displaced families as they arrived on the mainland and transitioned into the community.¹⁴⁷⁷

The Stafford Act and The Disaster Recovery Reform Act of 2018 describe specific groups of people, or protected classes, who are more predisposed to potential harm and/or have a history of being discriminated against.¹⁴⁷⁸ Although all survivors of natural disasters are vulnerable, certain marginalized populations face additional challenges and barriers when a disaster occurs, e.g., people with disabilities who do not have access to accommodations like wheelchairs, oxygen, or access to safe environments.¹⁴⁷⁹

Additionally, in written testimony and at the briefing in Puerto Rico, it was emphasized that the Stafford Act does not require a title to prove homeownership,¹⁴⁸⁰ even though many María survivors were denied assistance due to homeownership documentation. Diane Yentel testified that 77,000 survivors were denied assistance due to lack of property title and that FEMA has been aware since at least 1995 of the challenge and harm their title documentation issues cause to low-income and marginalized communities.¹⁴⁸¹ FEMA's own policies allowed for the use of alternate documentation, even prior to 2017, with a disaster occurring in an insular area (such as Puerto Rico) as a specific example as to why a survivor may not be able to provide standard ownership verification.¹⁴⁸²

In response to Commission's document requests, FEMA indicated that there are no differences in how the agency responds to disasters generally in the continental U.S. compared to U.S. territories.¹⁴⁸³ However, as discussed in previous chapters, FEMA did state that logistical challenges unique to Puerto Rico complicated response efforts as compared to FEMA responses to disasters in the continental United States.¹⁴⁸⁴

Civil Rights Complaints Received

FEMA reported receiving a total of 99 complaints, which included 115 allegations of civil rights violations following the response to Harvey in Texas.¹⁴⁸⁵ The alleged violations broke down into 30 allegations on the basis of race, 12 on the basis of national origin, 20 on economic status, four

¹⁴⁷⁷ Navarro Statement, at 11.

¹⁴⁷⁸ *Texas SAC Advisory Memo*.

¹⁴⁷⁹ *Ibid.*

¹⁴⁸⁰ Carmen Yulin Cruz Soto, Weissman Fellow in Leadership, Mount Holyoke College, testimony, *Puerto Rico Briefing*, p. 31.

¹⁴⁸¹ Yentel Testimony, *Puerto Rico Briefing*, pp. 48-49.

¹⁴⁸² FEMA, *Individuals and Households Program Unified Guidance (IHPUG)*, p. 18; Yentel Testimony, *Puerto Rico Briefing*, pp. 82-83.

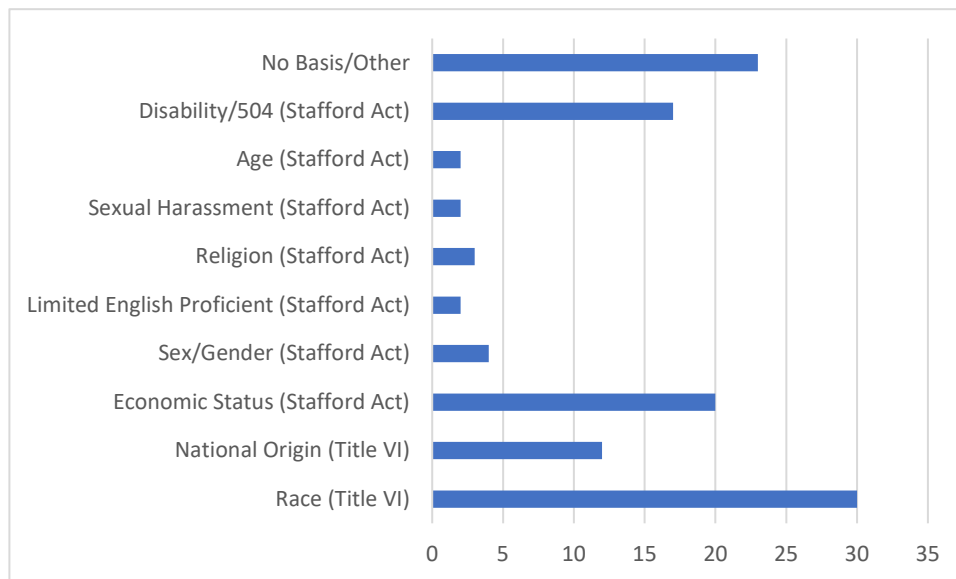
¹⁴⁸³ FEMA Response to USCCR Interrogatory No. 2 at 16.

¹⁴⁸⁴ *See, supra* notes 1407-1412.

¹⁴⁸⁵ FEMA Response to USCCR Interrogatory No. 9 at 21; FEMA Attachments to USCCR Interrogatories at 9 (Hurricane Harvey Civil Rights Log Metric) (note that a single complaint may contain more than one allegation of discrimination or civil rights violation).

on the basis of sex/gender, two on the basis of limited English proficiency, three on religion, two allegations of sexual harassment, two on the basis of age, 17 due to disability, and 23 no basis or other.¹⁴⁸⁶ All of the 99 complaints related to Harvey have been closed.¹⁴⁸⁷ FEMA reported to the Commission that “[a]lmost a quarter of allegations received after Hurricane Harvey referred to no underlying civil rights or nondiscrimination authority as the survivor did not identify a protected basis.”¹⁴⁸⁸ CRCL investigated a complaint about FEMA’s civil rights complaint procedures. In September 2021, CRCL issued five recommendations related to FEMA’s civil rights complaint investigation procedures and civil rights complaint data.¹⁴⁸⁹

Figure 18 Hurricane Harvey Civil Rights Allegations



Source: Federal Emergency Management Agency, Data Adapted by Commission

FEMA stated that 96 of the allegations received were closed without the filing of a formal complaint.¹⁴⁹⁰ FEMA reported to the Commission that the concerns underlying the allegations were able to be resolved through coordination with Individual Assistance and other program areas that FEMA operates.¹⁴⁹¹ The two complaints that were filed were investigated and resolved.¹⁴⁹²

¹⁴⁸⁶ Ibid.

¹⁴⁸⁷ Ibid.

¹⁴⁸⁸ Joint FEMA Statement, at 8.

¹⁴⁸⁹ U.S. Dep’t of Homeland Security Office for Civil Rights and Civil Liberties, Response to Affected Agency Review, May 25, 2022 [on file].

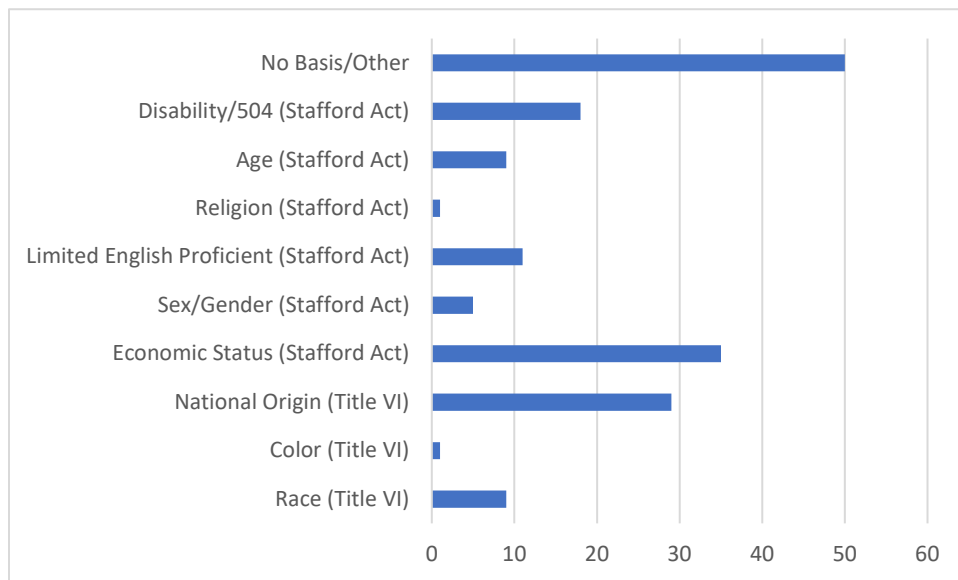
¹⁴⁹⁰ Ibid.

¹⁴⁹¹ Ibid.

¹⁴⁹² Ibid.

After María, FEMA reported receiving 152 complaints, which included 168 allegations of civil rights violations.¹⁴⁹³ The alleged violations broke down into nine allegations on the basis of race, one on the basis of color, 29 on the basis of national origin, 35 on the basis of economic status, five on the basis of sex/gender, 11 on the basis of limited English proficiency, one on religion, nine on the basis of age, 18 due to disability, and 50 no basis or other.¹⁴⁹⁴ All but one of the 152 allegations related to Hurricane María have been closed.¹⁴⁹⁵ FEMA reported to the Commission that, “[l]ess than 30% of the allegations received after Hurricane María referred to no underlying civil rights or nondiscrimination authority as the survivor did not identify a protected basis.”¹⁴⁹⁶

Figure 19 Hurricane María Civil Rights Allegations



Source: Federal Emergency Management Agency, Data Adapted by Commission

As was the case with Harvey, FEMA was able to resolve 153 allegations related to María without filing a civil rights complaint.¹⁴⁹⁷ As of June 2021 when FEMA provided testimony to the Commission, two allegations had been filed as complaints and were pending resolution.¹⁴⁹⁸ Despite receiving several hundred allegations of discrimination in the aftermath of Harvey and María, FEMA closed all but one of its investigations without any findings of discrimination.¹⁴⁹⁹

¹⁴⁹³ FEMA Response to USCCR Interrogatory No. 10 at 21; FEMA Attachments to USCCR Interrogatories at 11 (Hurricane María Civil Rights Log Metric) (note that a single complaint may contain more than one allegation of discrimination or civil rights violation).

¹⁴⁹⁴ *Ibid.*

¹⁴⁹⁵ *Ibid.*

¹⁴⁹⁶ FEMA Joint Statement, at 9.

¹⁴⁹⁷ *Ibid.*

¹⁴⁹⁸ *Ibid.*

¹⁴⁹⁹ FEMA Response to USCCR Interrogatory No. 9 at 21; FEMA Attachments to USCCR Interrogatories at 9; FEMA Response to USCCR Interrogatory No. 10 at 21; FEMA Attachments to USCCR Interrogatories at 11.

As discussed later, managing the bureaucratic process of applying for aid and appealing decisions may have been a hindrance to some survivors.¹⁵⁰⁰

Community Site Visits

As part of the Commission’s investigation regarding FEMA’s response to María, Commissioners and staff were invited to visit two communities in Puerto Rico, both of which were severely damaged during the disaster. The first visit was to the area of El Caño, which surrounds El Caño Martín Peña (CMP) which is an almost 4-mile-long tidal channel located within the San Juan Bay National Estuary in Puerto Rico. The second location was the municipality Loíza, which is home to Puerto Rico’s largest culturally Afro-Caribbean community and is known as “La Capital de la Tradición” (Capital of Traditions).

While only a 30–45-minute drive from San Juan, the recovery for both communities has been slow and difficult; even four years after María made landfall in Puerto Rico, survivors are still not having their needs met. The Commission heard presentations and testimony from many community leaders and survivors about the experiences in the ongoing recovery process following María and the below section provides excerpts from these survivors’ stories.

El Caño

By way of background, The Caño Martín Peña (CMP) is a 3.75-mile-long tidal channel located in San Juan, Puerto Rico.¹⁵⁰¹ While the eastern half of the CMP was originally between 200 and 400 feet wide and navigable, the channel is now clogged with sediment, debris, and waste which obstructs the hydraulic flow of the San Juan Bay Estuary. This obstruction not only creates infrastructure risks, but also poses risks to public safety and communal health due to the risk of flooding.¹⁵⁰²

Over 3,000 structures still discharge raw sewage into the remains of the channel and the combination of the lack of adequate sanitation systems, stormwater infrastructure, and the clogged CMP results in the frequent flooding of the area.¹⁵⁰³ For residents of El Caño, there is a “constant risk residents will come into direct contact with polluted water from the floods.”¹⁵⁰⁴ Research conducted in the district “shows that [exposure] to flood water leads to an increased risk of gastrointestinal diseases (GID) and a higher prevalence of chronic diseases, such as

¹⁵⁰⁰ Perrigue Gomez Statement, at 6-7.

¹⁵⁰¹ Fact Sheet: Caño Martín Peña Ecosystem Restoration Project: Moving Forward with Construction, Nov. 2021, p. 1.

¹⁵⁰² El Caño Information, p. 1.

¹⁵⁰³ See e.g., Maria Brodine, “Proyecto ENLACE del Caño Martín Peña: Restoring an Ecosystem and Building Resilient Communities in Puerto Rico,” Dec. 22, 2017, <https://urbanwaterslearningnetwork.org/resources/proyecto-enlace-del-cano-martin-pena-restoring-ecosystem-building-resilient-communities-puerto-rico/>.

¹⁵⁰⁴ El Caño Information, p. 1.

bronchial asthma and atopic dermatitis.”¹⁵⁰⁵ In addition, the “prevalence of gastrointestinal and allergic diseases in the Caño is higher when compared to Puerto Rico, due to the contact with highly polluted waters.”¹⁵⁰⁶

The CMP consists of a population of about 26,000 residents, which makes the area the most densely populated in Puerto Rico – almost three times the rate for the municipality of San Juan and 19 times that of Puerto Rico.¹⁵⁰⁷ The area consists of eight communities, which include Barrio Obrero (Oeste and San Ciprián), Barrio Obrero Marina, Buena Vista Santurce, Parada 27, Peninsula de Cantera, Israel Bitumul, Buena Vista Hato Rey, Las Monjas, and Parada 27.¹⁵⁰⁸ According to the 2018 American Community Survey, the estimated median household income for families in the CMP is \$12,925.¹⁵⁰⁹ Despite its proximity to San Juan, “CMP communities have a long history of poverty, urban overcrowding, unsafe living conditions, exposure to environmental and health hazards, and marginalization.”¹⁵¹⁰

Due to the degradation of the channel and public health hazards, the CMP and its neighboring communities were designated a special planning district in 2002. Over the next two years, with actions taken by over 700 planning activities, the Puerto Rican legislature unanimously approved the foundation for the Comprehensive Development and Land Uses Plan for the Caño Martín Peña Special Planning District (CMP District Plan) and the Corporación del Proyecto ENLACE del Caño Martín Peña (ENLACE) was created with the mission to oversee and implement the CMP District Plan.¹⁵¹¹

ENLACE works closely with what is known as the G-8 (Grupo de las Ocho Comunidades Aledañas al Caño Martín Peña), which is a non-profit organization comprised of 12 grassroots organizations with the goal of ensuring CMP residents are able to participate in the decision-making processes and decisions, as well as preventing the involuntary displacement and gentrification of these communities.¹⁵¹²

The Commission met with 12 community leaders on December 9, 2021, the list of individuals and their respective organizations is below:

¹⁵⁰⁵ Ibid.

¹⁵⁰⁶ Rodríguez Del Valle, Written Statement, at 6.

¹⁵⁰⁷ ENLACE Letter to Luis Carlos Fernández Trinchet, Secretary of Dep’t of Housing, Puerto Rico CDBG-MIT Program, Nov. 20, 2020 [on file].

¹⁵⁰⁸ Rodríguez Del Valle, Written Statement, at 2.

¹⁵⁰⁹ ENLACE Letter to Luis Carlos Fernández Trinchet, Secretary of Dep’t of Housing, Puerto Rico CDBG-MIT Program, Nov. 20, 2020 [on file].

¹⁵¹⁰ Luis Carlos Fernández Trinchet, Secretary, Dep’t of Housing, Puerto Rico CDBG-MIT Program, Comments to the Puerto Rico CDBG-Mitigation Action Plan, November 20, 2020, p. 3.

¹⁵¹¹ See e.g., María Brodine, “Proyecto ENLACE del Caño Martín Peña: Restoring an Ecosystem and Building Resilient Communities in Puerto Rico,” Dec. 22, 2017, <https://urbanwaterslearningnetwork.org/resources/proyecto-enlace-del-cano-martin-pena-restoring-ecosystem-building-resilient-communities-puerto-rico/>.

¹⁵¹² Ibid.

1. José Caraballo Pagán – Barrio Obrero Marina
2. Nayda Bobonis Cabrera - Buena Vista Hato Rey
3. María V. Castro De Jesús – Buena Vista Santurce
4. Diana Babilonia – Las Monjas
5. Jesús Manuel Laracuenta – Las Monjas
6. Sixta Gladys Peña Martínez – Las Monjas
7. Felícita Maldonado Rodríguez – Presidenta Consejo Vecinal Cantera
8. Juan García Miranda - Buena Vista Santurce
9. Lucy Cruz Rivera – Presidenta G-8 (Presidenta de las 8 comunidades)
10. Mario Núñez – Director Ejecutivo Proyecto Enlace Caño Martín Peña
11. Estrella Santiago Pérez– Gerente de Asuntos Ambientales Proyecto Enlace Caño Martín Peña
12. Jean Carlos Cuevas Díaz – Coordinador Ambiental Proyecto Enlace Caño Martín Peña

Following Hurricane María, conditions worsened for CMP residents. According to Lyvia Rodriguez Del Valle, former Executive Director of ENLACE:

[M]any communities along the Caño were flooded with wastewater for several days. [O]ver 50% of the trees along the eastern half of Martin Peña fell, further blocking the Caño. The frequency of floods has increased. For example, floods have been documented on sunny day[s], or after a 15-minute rainfall... Around 1,000 homes had their roofs completely or partially blown away, 75 of which were destroyed. Many families lost most of their material possessions, while others lost their sources of income. As in most of Puerto Rico, the communities along the Caño did not have power.¹⁵¹³

The Commission heard stories from disaster survivors about the devastation the hurricane caused to entire neighborhoods and as this report has documented, it was community members and volunteers that rallied together to rebuild.¹⁵¹⁴ After just a month following María, and with the support of over 620 volunteers, the community was able to distribute over 800 tarps, remove approximately 2,565 cubic yards of vegetative materials that were blocking roads and sidewalks, and assisted over 682 families in applying for FEMA IA assistance, distributed goods, food, water, mosquito repellent and nets, among other donations.¹⁵¹⁵

Rodriguez Del Valle explained that, even four years later, there continues to be significant health concerns due to the degradation of the Caño and the effects of the hurricane. At a HUD hearing regarding the CDBG program in Puerto Rico, she testified that “health and safety issues have

¹⁵¹³ Rodriguez Del Valle, Written Statement, at 4.

¹⁵¹⁴ See, *supra* notes 1359-1371 (discussing work of nonprofits in Puerto Rico following María).

¹⁵¹⁵ ENLACE Letter to Luis Carlos Fernández Trinchet, Secretary of Dep’t of Housing, Puerto Rico CDBG-MIT Program, Nov. 20, 2020 [on file].

heightened. [There is] a rat infestation due to the presence of debris and to the disturbance of the Caño, where they used to remain.”¹⁵¹⁶ The increased presence of rats in the CMP can result in the transmission of leptospirosis to humans, which can be fatal.¹⁵¹⁷

Louis Jorge Rivera Herrera, a San Juan-based environmental scientist, explained that as the atmosphere and oceans continue to warm, natural disasters like María will become more prevalent and more extreme.¹⁵¹⁸ As such, “the kind[s] of community projects you see in El Caño, deeply rooted in citizen involvement and empowerment, provide an excellent footprint to follow in the years ahead.”¹⁵¹⁹

An environmental manager with Project ENLACE explained that resiliency and community partnership are key in the recovery process, especially for low-income communities. She stated that:

Our communities may not have the most resources, but they know how to rapidly organize and help themselves... Being organized and having a history of active participation and solidarity was essential after María, especially in the crucial first week. The leadership already knew the specific needs of families, who were most affected, who needed diapers, a tarp, money. They also had experience with dirty floodwater and preventing diseases. In a lot of ways, people in the G8 were more prepared and more open to help each other.¹⁵²⁰

In terms of working with FEMA to distribute goods and services directly after María, some G8 residents felt frustrated with the federal response efforts. For instance, Evelyn Quinones, a G8 resident who collected FEMA applications on behalf of FEMA stated that “they never gave us a time frame for delivering the aid, and from what I have seen, I have little faith... We do this work with a lot of love, but also with a lot of sadness. We can’t tell people when the aid will come. We’re still waiting.”¹⁵²¹

The president of the G8 Association, Lucy Cruz raised issues regarding the shortage of Spanish-language FEMA technicians, translators, and staff members, and very few were found in the communities that needed them the most. Cruz stated:

¹⁵¹⁶ Rodriguez Del Valle, Written Statement, at 5-6

¹⁵¹⁷ Ibid.

¹⁵¹⁸ Alexander Zaitchik, “Hurricane Maria: Inside a Puerto Rican Barrio’s Fight to Survive,” *Rolling Stone*, Oct. 17, 2017, <https://www.rollingstone.com/culture/culture-features/hurricane-maria-inside-a-puerto-rican-barrios-fight-to-survive-201428/>.

¹⁵¹⁹ Ibid.

¹⁵²⁰ Ibid.

¹⁵²¹ Ibid.

We understand they're stretched thin, but we are the most impacted communities in San Juan... We expected them to at least have offices here on the ground. They're asking us to prepare claims through the Internet and over the phone, but people don't have access to those things.¹⁵²²

Additionally, as this report has documented, proving ownership of homes posed a significant hurdle in receiving FEMA aid.¹⁵²³ As such, many attorneys and legal aid organizations went to communities and worked to get sworn, notarized statements of proof of ownership. Despite that FEMA stated that it would allow for these sworn statements, there were many cases where homeowners were still denied. One law professor who was working with community members following María explained that FEMA would “grant assistance to some but not others. We [didn't] know what criteria they used.”¹⁵²⁴

For residents of Caño Martín Peña, the process of proving homeownership to receive aid from FEMA was also confusing for many reasons. In 2009, the community established a land trust and was formally recognized by the government, which ensured that all residents of Caño Martín Peña had legal titles to their homes. However, that title was a collective title, not an individual title such as the ones that are more common in the continental United States. Maria Hernandez, a law professor at the University of Puerto Rico explained that:

Even with the community land trust, it hasn't been easy for all the trust's members or the people who live in the trust to get FEMA's help. People are making requests, complaining, and filing claims, but not everyone understands the model or these people's right to be where they are.¹⁵²⁵

FEMA replied that residents living in Caño Martín Peña who could prove homeownership may be eligible for disaster assistance.¹⁵²⁶ The agency stated that if standard ownership documents are not available, it may accept a written statement as an alternative form of proof. However, as the Commission heard, there were many cases when residents were still denied.¹⁵²⁷

Cristina Miranda, Executive Director of Liga de Ciudades de Puerto Rico posited that the community land trust model could be a beneficial strategy for many other communities in Puerto Rico, as a method to reduce displacement and gentrification. Community advocates have criticized the government's longstanding tendency to develop new, luxury buildings instead of

¹⁵²² Ibid.

¹⁵²³ See, *supra* 1027-1051 (discussing home verification documents).

¹⁵²⁴ Zoe Sullivan, “The Role of Community Land Trusts After Hurricane Maria,” Jun. 1, 2018, *Next City*, <https://nextcity.org/urbanist-news/the-role-of-community-land-trusts-after-hurricane-maria>.

¹⁵²⁵ Ibid.

¹⁵²⁶ Ibid.

¹⁵²⁷ See, *supra* notes 1030-1031 (discussing denials).

rehabilitating existing structures and this practice is especially apparent following a disaster. Miranda claimed that “FEMA thinks it’s better to remove people from flood-prone areas and not to help us with this. It’s not right that we who built it get displaced from this community so that others can come live in the Caño.”¹⁵²⁸

As these communities continue to rebuild after the hurricanes, during the meeting, the Commission heard presentations regarding the CMP-Ecosystem Restoration Project (CMP-ERP) which

seeks to restore the tidal connection between the eastern and western portion of the SJBE through the dredging and channelization of 2.2 miles of the CMP [and] will restore the flow of water between the San Juan Bay and the San Jose lagoon, uplifting over 6,600 acres of the San Juan Bay Estuary.¹⁵²⁹

By dredging the CMP, organizers of the Project state that it could

remove most pollutants deposited along the eastern half of the canal and induce circulation of clean ocean water across the entire estuary. This circulation [would] improve the water quality of the entire estuary and promote the establishment of more diverse and healthy fish and wildlife habitats throughout the estuary.¹⁵³⁰

Additionally, this project would reduce flood risks by eliminating blockages in the Caño Martín Peña which prevents proper drainage of local stormwater. By reducing the communities’ exposure to floodwaters, it would also reduce the psychological, emotional, and financial stresses related to frequent floods and health conditions would significantly improve for CMP residents.¹⁵³¹

The Commission also heard from the community leaders that to continue rebuilding, funds are needed to address the public health, housing, and infrastructure needs that were exacerbated by the hurricane. The Project plans to address the issues described above as well as contribute to the long-term mitigation and adaptation strategies brought on by climate change and support the resiliency of the residents who live in the area.¹⁵³²

¹⁵²⁸ Sullivan, “The Role of Community Land Trusts After Hurricane María.”

¹⁵²⁹ Rodríguez Del Valle, Written Statement, at 3.

¹⁵³⁰ Fact Sheet: Caño Martín Peña Ecosystem Restoration Project: Moving Forward with Construction, November 2021, p. 2.

¹⁵³¹ *Ibid.*

¹⁵³² ENLACE Letter to Luis Carlos Fernández Trinchet, Secretary of Dep’t of Housing, Puerto Rico CDBG-MIT Program, Nov. 20, 2020 [on file].

Loíza

The municipality of Loíza consists of 23,693 residents (as of April 2020)¹⁵³³ and while close in proximity to the capital, it is unlike other parts of the Island. It has a rich and renowned African-influenced culture and heritage that is celebrated through cuisine, dance, and music.

On the 2020 Census, almost all (99.7 percent) of Loíza residents consider themselves to be Hispanic and 95.1 percent indicated they speak a language other than English at home.¹⁵³⁴

Demographically, Loíza has one of the largest populations of African descendants in Puerto Rico – with almost 40 percent of the residents identifying themselves as Black, according to the U.S. Census Bureau.¹⁵³⁵ It is comprised of six barrios (or districts): Canovanas, Loíza Pueblo, Mediania Alta, Mediania Baja, Torrecilla Alta, and Torrecilla Baja.¹⁵³⁶

The communities of Loíza were especially vulnerable to the damage caused by Hurricane María due to historical marginalization, underinvestment, and poverty (with nearly half of the residents living below the poverty line and the median household income is \$17,852).¹⁵³⁷ The municipality is also geographically vulnerable as it is situated between rivers and the Atlantic Ocean. The communities of Loíza also face challenges due to severe coastal erosion that has worsened over the years due to the sea-level rise and increasingly strong storms that are linked to climate change.¹⁵³⁸ This is significant because erosion makes the beachfront areas of communities in Loíza, like Parcelas Suárez, more at-risk of flooding and Loíza residents further inland at a high risk from swollen rivers.¹⁵³⁹

In 2017, when María hit the Island of Puerto Rico, areas such as Loíza were inundated with deadly floods and contaminated floodwaters invaded homes.¹⁵⁴⁰ One resident told the Commission that:

I called the municipality, Public Works. Three times they came to my house to collect everything [] or what they could. They took everything from my house. My house was

¹⁵³³ U.S. Census Bureau, QuickFacts, Loíza Municipality, Puerto Rico, <https://www.census.gov/quickfacts/loizamunicipiopusuertorico>.

¹⁵³⁴ Ibid.

¹⁵³⁵ According to the Census (as of July 1, 2021): 99.7% identified as Hispanic or Latino, followed by 38.7% as Black or African American alone, and 24.3% as White alone; and all other race/ethnic categories were under 1%. See U.S. Census Bureau, QuickFacts, Loíza Municipality, Puerto Rico, <https://www.census.gov/quickfacts/loizamunicipiopusuertorico>.

¹⁵³⁶ Welcome to Puerto Rico, Loiza, <https://welcome.topuertorico.org/city/loiza.shtml>

¹⁵³⁷ U.S. Census Bureau, QuickFacts, Loíza Municipality, Puerto Rico, <https://www.census.gov/quickfacts/loizamunicipiopusuertorico>.

¹⁵³⁸ Kari Lydersen, Martha Bayne, and Isabel Sophia Dieppa, “Turning the Tide: In Loiza, Puerto Rico, A Community Fights For Its Future,” Sept. 13, 2019, <https://pulitzercenter.org/stories/turning-tide-loiza-puerto-rico-community-fights-its-future>

¹⁵³⁹ Ibid.

¹⁵⁴⁰ Rick Jervis, Hurricane Maria Aftermath: Puerto Rico Battles Epic Flooding, *USA Today*, Sept. 22, 2017, <https://www.usatoday.com/story/news/world/2017/09/22/hurricane-maria-aftermath-puerto-rico-battles-floods/692251001/>

flooded. I had to dig a hole in the room for the water to come out. In the last room [I had to dig] another hole for water to come out. My room when I went to open the door... I have a granddaughter who was the one who helped me, because I couldn't go in there when I saw that. I was traumatized... everything was damaged by the water accumulation in the house... I had nothing, nothing... I had no clothes, there was no food, there was nothing.¹⁵⁴¹

A study by the Milken Institute of Public Health, *Ascertainment of the Estimated Excess Mortality from Hurricane María in Puerto Rico*, that examined the effects of María showed that the highest number of excess deaths occurred in the poorest communities, especially among the elderly.¹⁵⁴² The researchers found that:

Every social stratum and age group was affected by excess mortality, however, the impact differed by age and socioeconomic status. Risk of death was higher and persistent until the end of [February 2018] for populations living in low socioeconomic development municipalities.¹⁵⁴³

One community member explained that while the entire island of Puerto Rico was impacted, the residents of Loíza faced additional challenges. He told the Commission:

[W]e have the problem, beyond, that we had to open the road to have access so that the aid could arrive, that the supplies could arrive, because we remained as if we were a separate island, within Puerto Rico itself. This town had more than 3,000 homes directly affected by the hurricanes.¹⁵⁴⁴

While official mortality counts were the subject of much debate among the federal government, the Puerto Rican government, and independent researchers,¹⁵⁴⁵ nonprofit organizations working with recovery efforts, such as Taller Salud, informally noted 20-30 deaths a month in Loíza

¹⁵⁴¹ Puerto Rico Site Visits Transcript p. 7 [on file].

¹⁵⁴² Milken Institute School of Public Health, *Ascertainment of the Estimated Excess Mortality from Hurricane María in Puerto Rico*, George Washington University, <https://publichealth.gwu.edu/sites/default/files/downloads/projects/PRstudy/Acertainment%20of%20the%20Estimated%20Excess%20Mortality%20from%20Hurricane%20Maria%20in%20Puerto%20Rico.pdf>.

¹⁵⁴³ Ibid.

¹⁵⁴⁴ Puerto Rico Site Visits Transcript p. 5 [on file].

¹⁵⁴⁵ See e.g., Lynn R. Goldman, “We calculated the deaths from Hurricane Maria. Politics played no role,” *Washington Post*, Sept. 15, 2018, https://www.washingtonpost.com/opinions/we-calculated-the-deaths-from-hurricane-maria-politics-played-no-role/2018/09/15/2b765b26-b849-11e8-94eb-3bd52dfe917b_story.html; Omayra Sosa Pascual, Carla Minet, Laura Candelas, Jeniffer Wiscovitch, Laura Moscoso, Víctor Rodríguez, David Cordero, “The Deaths of Hurricane Maria,” Centro de Periodismo Investigativo, Sept. 2018, <https://periodismoinvestigativo.com/2018/09/the-deaths-of-hurricane-maria/>.

directly following María. They explained that, for example, “[w]ithout electricity and roofs, simple ulcers quickly developed into septicemia.”¹⁵⁴⁶

During the Commission’s visit to Loíza, another community member explained:

After Hurricane María, as everyone knows, we were without power for a long time, without electric power. Excuse me if I pause because this is remembering this great tragedy again. [When] the power went out, all internet signals went out. We had nothing; we were totally isolated. Our country on the map was completely dark and blended in with the sea that was also dark.¹⁵⁴⁷

Another resident explained that:

We had water problems, we had electricity problems. They talked about six months, I was in the famous blackout areas, and I was almost a year without electricity, about 11 months and 10 days. About 25-30 houses, everyone had electric power around us, and we didn’t. So, that incurred a lot of expenses that we couldn’t cover a lot of times because you have to buy gasoline for the generators and all these other expenses that we didn’t have before.¹⁵⁴⁸

Due to the unavailability of basic services such as power and clean drinking water, plus the lack of supplies distributed to the area, just a month after María hit, community volunteers and organizations had significant public health concerns. Chris Skopec, Executive Vice President for Global Health and Emergency Response with Project Hope stated that:

The sense of desperation is only growing with every passing day... We are seeing increasing rates of gastrointestinal disease as there are increasing reports of people drinking river water, and otherwise unable to access clean water... It’s a very bad situation and the outlook is that it’s going to continue to get worse before it gets better.¹⁵⁴⁹

The Commission heard many stories about the terrible hardships that survivors endured following the disaster as they tried to repair and replace all that was lost, much of which could never be replaced. However, and importantly, these stories also spoke to a profound sense of

¹⁵⁴⁶ Amnesty International, “Puerto Rico a Year After Hurricane Maria,” Sept. 2018, <https://www.amnesty.org/en/latest/research/2018/09/puerto-rico-a-year-after-hurricane-maria/>.

¹⁵⁴⁷ Puerto Rico Site Visits Transcript p. 3 [on file].

¹⁵⁴⁸ Puerto Rico Site Visits Transcript p. 5 [on file].

¹⁵⁴⁹ Phil McKenna, “Desperation Grows in Puerto Rico’s Poor Communities Without Water or Power,” *Inside Climate News*, Oct. 4, 2017, <https://insideclimatenews.org/news/04102017/puerto-rico-health-crisis-hurricane-maria-poverty-water-power-epidemic-risk-photos/>.

resilience and solidarity among community members as they supported each other – be it by bringing food, doing friends’ and neighbors’ laundry, stretching tarps over damaged roofs, or clearing debris. For example, one woman, Lita, told the Commission that:

In my personal experience, when Hurricane María passed, my *comay* (close friend) Monin [] called me. She is a very good person, because no one from my family said, “Lita come,” no friends, or neighbors, but that lady did and she had me in her house all night, while Hurricane María passed. Well, I went to my neighbor’s house, my *comadre* (close friend). I made it through the storm. Thank God that in my community everyone lives well. Everyone is safe, they have their houses well built, they have their family that gives a hand, that helps, as I do help them too. You see, everything that happened, I was there the whole time with them...

And I went [out] early, it wasn’t even 5 in the morning. I swear to you, to cross the road, to leave the house, [I had] to jump. I don’t know how many trees and all because there was nowhere to walk. But I got to my house, and when I got to my house the community was outside. Thank God that everyone was [there] with their machetes, with their people, they helped me, they opened the way, we all helped each other, and they still have their house. My brother helped me, thanks to him ... and he also helped me open my way to enter my house. I went up to the entrance, I went up to the balcony, I opened my door [and] there was nothing, the roof was gone, the house was all damaged... There are united experiences, many sad things, apart from the fact that I lived through, while so many people lost their lives because there was a lot of death here.¹⁵⁵⁰

Similar to what this report has found, other survivors spoke about the complexity and difficulty in applying for and receiving FEMA aid after María.¹⁵⁵¹ For example, Carmen, a resident in Loíza who had lost her roof in the hurricane explained that FEMA home inspectors first came to her home in November 2017 to assess the damage. Following months of applications, submitting paperwork, and going through appeals, FEMA paid about \$2,300 for home repairs in addition to some additional money for personal items and rent.¹⁵⁵² Carmen stated, however, that the builders she would need to hire to replace the roof, quoted her \$16,000. And in a municipality where the median household income is \$17,852 (in 2019),¹⁵⁵³ many residents found themselves in similar situations and unable to replace their roofs or repair their homes.¹⁵⁵⁴

¹⁵⁵⁰ Puerto Rico Site Visits Transcript p. 6-7 [on file].

¹⁵⁵¹ See, *supra* notes 1114-1128 (discussing application barriers and complications).

¹⁵⁵² Amnesty International, “Puerto Rico a Year After Hurricane Maria,” Sept. 2018, <https://www.amnesty.org/en/latest/research/2018/09/puerto-rico-a-year-after-hurricane-maria/>.

¹⁵⁵³ U.S. Census Bureau, “Loíza Municipio, Puerto Rico,” *QuickFacts*, <https://www.census.gov/quickfacts/loizamunicipiopoertorico> (accessed Feb. 25, 2022)

¹⁵⁵⁴ Amnesty International, “Puerto Rico a Year After Hurricane Maria,” Sept. 2018, <https://www.amnesty.org/en/latest/research/2018/09/puerto-rico-a-year-after-hurricane-maria/>.

Another resident described her interaction working with a FEMA inspector this way:

I told [the inspector] that what happened here was not [from] Irma, I told him very clearly, this was María, when María came [she] damaged everything, she took everything. She took the roof, and it went out, completely... And then he also filled out his documents, took photos, and more. I did not receive anything. My house is just like María's time [sic], come and see it. My house as I said before [] hasn't been able to recover, I haven't been able to. I do little things out there to be able to support myself. I have no one that gives me anything... FEMA came here twice, [] to this municipality, twice I went []and the inspector did nothing. He said he would come and so on and nothing. So here I am.¹⁵⁵⁵

Similarly, one woman explained her confusion and frustration regarding the lack of assistance from FEMA following María:

The information began to arrive little by little that all the FEMA personnel would arrive on the scene some weeks later, the first challenge we had was that we did not know where we were going to ask for help. We did not know anything; we were without information of any kind. We barely had a single [radio] station on the air; only one. I was awake the whole time and we had only one station left. And on that station, everyone tried to call to connect with their relatives who were still alive. So, when the information arrived, slowly, about where we should go to seek help, we found that there was nowhere in Loíza where we could request this help...

A month later, we were still looking for how to access those aids or at least information for all these people... And it was such despair for these people, especially the elderly, who were left with nothing; they lost everything. Those who didn't get flooded, got sick; those who did not get sick, their roofs got damaged. They ran out of food, they were left with nothing, and we had nowhere to ask for help. The accesses were totally blocked. The neighbors had to use machetes, to be able to open the way themselves, so that Loíza could have access to the rest of the country. So, when everything was restored and agencies arrived, especially FEMA, there was still no place in Loíza. You had to go to Canóvanas and there was no transportation, there was no way to get there. When we got there, they told us we had to enter the information in a computer, in English, because it was not in Spanish either. Then they implement[ed] Spanish on some computers but then the line [to wait] was huge and the [waiting] time was long. So, we understand we were discriminated against, because of the language, because of the access, because we didn't have a place to go. You couldn't walk, you had to go by car, there was no transportation, there was no gasoline to get there. So, yes, we want, we need our voice [to be heard] in

¹⁵⁵⁵ Puerto Rico Site Visits Transcript p. 8 [on file].

whatever forum it is, so that this does not happen again. In the next event that comes, we demand that the federal agencies have to respect and help us, give us a way to communicate and go back to paper and pencil, which is the most reliable way.¹⁵⁵⁶

Two years after María, a study found that there were over 300,000 housing units located in the 500-year floodplain,¹⁵⁵⁷ which represents about 20 percent of the Island’s housing units.¹⁵⁵⁸ At the time of the study, Loíza had 11,470 housing units, with 47 percent of those located in the 100-year floodplain map and 77 percent located in the 500-year floodplain map. This makes Loíza the municipality with the first and second largest share of housing units in the 100- and 500-year floodplain maps, respectively.¹⁵⁵⁹ This is significant because that means over a majority of homes reside in a floodplain and homeowners are often denied federal assistance to repair or rebuild their homes unless they carry flood insurance (e.g., through the National Flood Insurance Program).¹⁵⁶⁰ This poses two serious concerns: first, as discussed previously, these policies can be prohibitively expensive, especially for low-income homeowners.¹⁵⁶¹ Second, homes that are in a designated floodplain are often denied flood insurance due to where they are located.¹⁵⁶² This means that FEMA can deny assistance to homeowners who do not carry flood insurance,¹⁵⁶³ but these homeowners – even if they could afford the insurance – may not be granted policies in the first place; ultimately leaving them without any federal aid to repair or rebuild.¹⁵⁶⁴

Moreover, some HUD CDBG programs prohibit using funds to rebuild damaged homes if they reside in a flood zone.¹⁵⁶⁵ Jenifer De Jesús Soto, Director of the Community and Leadership

¹⁵⁵⁶ Puerto Rico Site Visits Transcript p. 4 [on file].

¹⁵⁵⁷ FEMA updates its flood zone maps, indicating which areas are considered at risk of flood every 100 or 500 years or at a 1 percent and 0.2 percent risk zone, respectively. See Isabel Sophia Dieppa, Kari Lydersen, and Martha Bayne, “Mapping Vulnerability in Puerto Rico,” Pulitzer Center, Jan. 10, 2020, <https://pulitzercenter.org/stories/mapping-vulnerability-puerto-rico>.

¹⁵⁵⁸ Center for Puerto Rican Studies, “Puerto Rico’s Vulnerable Communities, “Flood Hazard, and Mitigation,” Mar. 17, 2021, p. 9, https://centopr.hunter.cuny.edu/sites/default/files/events_2021/jh_vulnerable%20Communities_3-17-21.pdf.

¹⁵⁵⁹ Jennifer Hinojosa, “Puerto Rico’s Vulnerable Communities, “Flood Hazard, and Mitigation,” Center for Puerto Rican Studies, Mar. 17, 2021, p. 9,

https://centopr.hunter.cuny.edu/sites/default/files/events_2021/jh_vulnerable%20Communities_3-17-21.pdf.

¹⁵⁶⁰ See National Flood Insurance Program, “Answers to Questions About the NFIP,” May 2020, https://www.fema.gov/sites/default/files/2020-07/fema_p213_08232018.pdf.

¹⁵⁶¹ FEMA, *National Advisory Council Report to the Administrator*; Sánchez Statement, at 6.

¹⁵⁶² Section 1316 of the National Flood Insurance Act of 1968, as amended, provides for the denial of flood insurance coverage for any property which the Administrator finds has been declared by a duly constituted State or local authority to be in violation of State or local floodplain management regulations.

See FEMA, Section 1316, <https://www.fema.gov/glossary/section-1316>.

¹⁵⁶³ Rosario-Méndez Statement, at 4.

¹⁵⁶⁴ FEMA told the Commission that it provides low-income communities the Group Flood Insurance Policy (GFIP) which covers 3 consecutive years after a flood event. The community members will need to continue to pay their own flood insurance with NFIP or Private after this term. FEMA may deny assistance to a survivor if the applicant did not proceed to cover their own insurance expenses after group policy has expired.

FEMA, Response to Affected Agency Review, May 16, 2022 [on file].

¹⁵⁶⁵ Navarro Statement, at 15; Martínez-Román Statement at 8.

Initiative at Taller Salud, in her written statement to the Commission explained that in March 2018, for residents of Loíza, most of the FEMA denials were due to lack of flood insurance, lack of a formal housing title, or lack of a physical address to present.¹⁵⁶⁶ This leaves some residents of Loíza, which is a short drive from wealthy areas of San Juan, worrying about gentrification, which includes developers and public officials wanting to uproot the communities to develop tourist hotels and other upscale developments.¹⁵⁶⁷

Researchers with the Center for Puerto Rican Studies explain that Loíza is “among the municipalities with the highest share of their population in the floodplains [] and with the highest social vulnerability index,¹⁵⁶⁸ which indicates significant risks for social and economic resources during pre- and post-flood events.”¹⁵⁶⁹ Advocates argue that FEMA and the Puerto Rico Department of Housing (PRDOH) incorrectly prioritize relocating families out of high-risk areas as a strategy for disaster mitigation, because displacement disrupts “a community’s social, ecological, and economic networks and thus feeds into a larger cycle of economic insecurity.”¹⁵⁷⁰ Therefore, they posit that instead of displacing or relocating communities, disaster recovery efforts should focus on disaster mitigation and community rehabilitation.

Investing in communities—especially those in or near high-risk areas—provides multiple benefits that can help break cycles of economic insecurity and vulnerability to disasters. Supporting communities and building social capital through ecological restoration develops both social networks and resources, thereby strengthening resilience and economic sustainability. In these ways, community-driven resilience measures can be more cost-effective than relocation. Additionally, the Stafford Disaster Relief and Emergency Assistance Act requires that alternative mitigation measures be considered to determine whether a proposal is the best approach to meet the community’s needs.¹⁵⁷¹

¹⁵⁶⁶ Jenifer De Jesús Soto, Director of the Community and Leadership Initiative at Taller Salud, Written Statement, at 3.

¹⁵⁶⁷ Rosario-Méndez Statement, at 3; Isabel Sophia Dieppa, Martha Bayne, and Kari Lydersen, “Mapping Vulnerability in Puerto Rico,” Jan. 10, 2020, <https://pulitzercenter.org/stories/mapping-vulnerability-puerto-rico>.

¹⁵⁶⁸ Social vulnerability refers to “the potential negative effects on communities caused by external stresses on human health. Such stresses include natural or human-caused disasters, or disease outbreaks.” See CDC/ATSDR Social Vulnerability Index, <https://www.atsdr.cdc.gov/placeandhealth/svi/index.html>.

¹⁵⁶⁹ Jennifer Hinojosa, “Puerto Rico’s Vulnerable Communities, “Flood Hazard, and Mitigation,” Center for Puerto Rican Studies, Mar. 17, 2021, p. 12, https://centropr.hunter.cuny.edu/sites/default/files/events_2021/jh_vulnerable%20Communities_3-17-21.pdf.

¹⁵⁷⁰ Ayuda Legal Puerto Rico, “The Relationship Between Disaster Recovery and Displacement,” Earth Economics, 2020, https://www.ayudalegalpuertorico.org/wp-content/uploads/2020/11/ALPR-EE-ENG.pdf?utm_source=alpr&utm_medium=alpr-blog&utm_campaign=climate-justice&utm_content=reporte.

¹⁵⁷¹ Ibid.

Chapter 4: Emerging Best Practices

FEMA’s mission is to help people before, during, and after disasters.¹⁵⁷² Before a disaster, FEMA’s emergency management role is to raise risk awareness, educate on risk reduction options, and help to take action.¹⁵⁷³ During a disaster, FEMA’s role is to alert, warn, and message, coordinate the Federal response, and apply and manage resources.¹⁵⁷⁴ After a disaster, FEMA’s role is to coordinate Federal recovery efforts, provide resources, and apply insight to future risks.¹⁵⁷⁵ Additionally, the core values of FEMA are compassion, fairness, integrity, and respect.¹⁵⁷⁶

While FEMA’s mission and core values are important, the best judge of FEMA performance in emergency management is to examine how FEMA performs in an actual disaster. For instance, Omar Marrero, Secretary of State for the Commonwealth of Puerto Rico, stated “we are grateful for FEMA’s support and willingness to partner with the Government by transforming the devastation of September 2017 into an opportunity to rebuild Puerto Rico better than new.”¹⁵⁷⁷ Conversely, Tania Rosario-Méndez, Executive Director of Taller Salud, testified to the Commission that the “federal preparedness and response to Hurricane María was at best mediocre; at worst, genocidal.”¹⁵⁷⁸ Many Puerto Ricans were left to fend for themselves in the wake of María because, as shared by Cristina Miranda, Executive Director of Liga de Ciudades, it took over two months for federal aid to reach the Island.¹⁵⁷⁹

Federal disaster response in the United States is predicted to further evolve, as Chris Currie, GAO Director of Homeland Security and Justice explained to the Commission, as the nation continues to experience increasingly severe weather due to climate change.¹⁵⁸⁰ Harvey and María were catastrophic events that received significant national attention. Many states throughout the country are experiencing increased natural disaster threats that in the past may have been considered atypical but are now becoming the norm in places that are not prepared for these natural disasters, such as West Virginia, Tennessee, and Nebraska.¹⁵⁸¹

Disasters such as hurricanes, floods, and wildfires are changing from localized events to state and regional-level catastrophes.¹⁵⁸² From 2016 to 2018, 5.6 million people applied for FEMA

¹⁵⁷² FEMA, “About Us,” <https://www.fema.gov/about>.

¹⁵⁷³ FEMA, “We Are FEMA: Helping People Before, During and After Disasters,” p. 6, https://www.fema.gov/sites/default/files/2020-03/publication-one_english_2019.pdf.

¹⁵⁷⁴ *Ibid.*

¹⁵⁷⁵ *Ibid.*

¹⁵⁷⁶ *Ibid.*, at 5.

¹⁵⁷⁷ Marrero Statement, at 1.

¹⁵⁷⁸ Rosario-Méndez Statement, at 2.

¹⁵⁷⁹ Miranda Statement, at 2.

¹⁵⁸⁰ *See e.g.*, Currie Testimony, *DC Briefing*, p. 33.

¹⁵⁸¹ *Ibid.*, at 34.

¹⁵⁸² *Ibid.*

disaster assistance; however, this does not include disaster aid requested from other federal agencies.¹⁵⁸³ Despite the growing number and intensity of disasters, FEMA reported that most states, territories, localities, and tribes lack a “rainy-day” fund to respond to large-scale events and as a result, depend on the federal government.¹⁵⁸⁴ The outlook is even worse for individual American citizens and families, many of whom do not have emergency funds to pay unexpected bills, let alone to prepare for disasters. Moreover, many are uninsured or underinsured, and therefore must rely on federal assistance after disasters.¹⁵⁸⁵

The federal government’s significant role in emergency disaster preparedness, response, and recovery has brought increased attention to civil rights issues and equity in distributing disaster assistance.¹⁵⁸⁶ These concerns are related to 1) what kinds of aid to provide, 2) who gets aid assistance, 3) how the aid is administered, and 4) when aid is received. As the need for disaster relief continues to grow, FEMA states that it is increasingly adopting scientific-based policies to address these changes.¹⁵⁸⁷

Prior to Harvey, FEMA’s Office of Equal Rights focused on providing a discrimination-free workplace for FEMA employees while also providing guidance and support to government officials and the American people to mitigate the occurrence of discrimination in disaster recovery.¹⁵⁸⁸ However, it was not until Harvey that FEMA established the FEMA External Civil Rights Division within the Office of Equal Rights specifically to address discrimination claims made by survivors and advocates.¹⁵⁸⁹ Chauncia Willis, Co-Founder and CEO of the Institute for Diversity and Inclusion in Emergency Management (I-DIEM), shared skepticism of prior emergency management disaster relief efforts, and she holds concerns about the future. She testified:

In emergency management, we call it disaster recovery. There are many federal, and state organizations that are now touting equity as their focus because of the Biden Administration’s equity mandate, but their actions are performative. They are doing what they need to do to check the box by hiring untrained equity consultants, and failing to make the bold, sweeping changes that will actually impact people, and how they are treated in disaster.¹⁵⁹⁰

¹⁵⁸³ Ibid.

¹⁵⁸⁴ Ibid.

¹⁵⁸⁵ Ibid, at 35.

¹⁵⁸⁶ FEMA, *National Advisory Council Report to the Administrator*.

¹⁵⁸⁷ Ibid.

¹⁵⁸⁸ Leslie Saucedo, Director, External Civil Rights Division, FEMA Office of Equal Rights, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Dec. 10, 2020, at 2 [on file].

¹⁵⁸⁹ Ibid, at 3.

¹⁵⁹⁰ Chauncia Willis, testimony, *Texas Briefing*, p. 90

FEMA stated that it has attempted to identify potential civil rights issues and develop practices to address them over the past several years.¹⁵⁹¹ FEMA's goal is to strengthen the agency's communication with members of underserved and historically marginalized communities, such as those with low income, differing ethnic groups, and limited English proficiency.¹⁵⁹²

In FEMA's 2017 After-Action Report, the agency reported that leaders, at all levels, made major adaptations to policies and programs to respond to significant operational challenges during the hurricane season.¹⁵⁹³ FEMA stated that lessons learned from these initiatives are guiding agency preparation, immediate response to, and initial recovery procedures across the agency and its partners across five focus areas: 1) Scaling a Response for Concurrent, Complex Incidents, 2) Staffing for Concurrent, Complex Incidents, 3) Sustained Whole Community Logistics Operations, 4) Responding During Long-Term Infrastructure Outages, and 5) Mass Care to Initial Housing Operations.¹⁵⁹⁴

In its 2017 After-Action report, FEMA also identified 18 strategic-level key findings and offered recommendations for improving preparations, response, and recovery. In scaling a disaster response, FEMA recommended major adjustments to agency policy, implementation of programs to improve the planning process, and improvements to the planning process and format to enhance usability during disaster operations.¹⁵⁹⁵ The report concluded that to improve effectiveness in readiness to respond to catastrophic events such as María, FEMA could have better utilized open-source information and preparedness data for Puerto Rico.¹⁵⁹⁶ The agency also recommended revisions to its National Response Framework and the Response Federal Interagency Operational Plan to address the five focus areas outlined above.¹⁵⁹⁷

Prior to and after 2017, FEMA wrote to the Commission that it had implemented several initiatives in an effort to ensure nondiscrimination on the basis of disability in its programs and activities, and to provide equal access and opportunities for qualified individuals with disabilities.¹⁵⁹⁸ These initiatives included formal and informal trainings on program access, effective communication, facility access, civil rights laws, and equity to both internal and external partners; including, but not limited to, FEMA personnel, government entities from the state, local, tribal and territorial level, federal partners, private non-profit entities, disability

¹⁵⁹¹ FEMA, "FEMA Will Host a Series of Civil Rights Stakeholder Summits," <https://www.fema.gov/blog/fema-will-host-series-civil-rights-stakeholder-summits>, last accessed Aug. 6, 2021.

¹⁵⁹² *Ibid.*

¹⁵⁹³ FEMA, *2017 Hurricane Season After-Action Report*, p. vi, https://www.fema.gov/sites/default/files/2020-08/fema_hurricane-season-after-action-report_2017.pdf.

¹⁵⁹⁴ FEMA *2017 Hurricane Season After-Action Report*.

¹⁵⁹⁵ *Ibid.*, at vi, and 8.

¹⁵⁹⁶ *Ibid.*

¹⁵⁹⁷ *Ibid.*, at vi.

¹⁵⁹⁸ FEMA, Supplemental Briefing Materials, Aug. 12, 2021, p. 6 [on file].

organizations and stakeholders, and FEMA program recipients.¹⁵⁹⁹ FEMA also reported that these trainings include the civil rights requirements and responsibilities to the programs that are directly responsible for providing assistance, such as the PA and IA programs.¹⁶⁰⁰ These programs work in collaboration with FEMA's Office of Disability Integration & Coordination (ODIC), the Office of Equal Rights (OER), and the Office of External Affairs (OEA).¹⁶⁰¹ Through FEMA's Emergency Management Institute (EMI), emergency managers and FEMA personnel receive accredited training on accessibility and inclusive emergency management practices and strategies.¹⁶⁰²

Coordination between Federal and State Governments

FEMA reported to the Commission that, due to the challenges posed by the active 2017 hurricane season, the agency was forced to implement federal programs for recovery that fell outside the scope of the Stafford Act, which challenged the coordination and application of funding schemes for disaster recovery.¹⁶⁰³ The national Recovery Support Function Leadership Group (RSFLG)¹⁶⁰⁴ has taken this as a "lesson learned" and worked with federal partners to develop Resource Roadmaps that highlight where federal resources are available for other disaster events, such as in COVID-19 recovery procedures. FEMA wrote that the agency plans to continue encouraging coordination at this level for future recovery operations.¹⁶⁰⁵ Chauncia Willis, co-founder of the Institute for Diversity and Inclusion in Emergency Management notes:

[W]hen examining the Stafford Act in response and recovery, federal assistance relies heavily on the State to administer funding which creates dissonance between communities and the federal government. This was evident in Hurricane Katrina, Hurricane María, and now Hurricane Harvey highlighting disconnects between lessons learned and present implementation strategies. Much of this is by the design of the Stafford Act which has seen minimal updates since enactment and plays into two binding political structures: federal government versus state government, and Democratic versus Republican parties. This is further exemplified when analyzing the OIG report on complexities between FEMA and Texas GLO wherein lack of process, guidance, or control contributed to discrepancies in housing program administration.¹⁶⁰⁶

¹⁵⁹⁹ Ibid.

¹⁶⁰⁰ Ibid.

¹⁶⁰¹ Ibid.

¹⁶⁰² Ibid.

¹⁶⁰³ Ibid.

¹⁶⁰⁴ FEMA chairs the RSFLG, which is an interagency coordinating structure for disaster recovery that was established in 2011 by the National Disaster Recovery Framework (NDRF). See FEMA, "National Disaster Recovery Framework," Jun. 2016, p. 41, https://www.fema.gov/sites/default/files/2020-06/national_disaster_recovery_framework_2nd.pdf.

¹⁶⁰⁵ Ibid.

¹⁶⁰⁶ Willis Statement, at 3.

Veronica Chapa Gorczynski, president of the East End District, asserts that more communication, collaboration, and coordination is needed between FEMA, HUD, and other federal agencies with local organizations that better understand the needs of the communities which they serve.¹⁶⁰⁷ Gorczynski suggests that policymakers “rethink the delivery of services through a poverty framework” approach to the equitable distribution of funds and services.¹⁶⁰⁸ This means that efforts should target community members who need the most help and who have the fewest resources prior to the occurrence of a natural disaster. This framework entails reframing delivery systems and planning to center on the needs of the most vulnerable and protected segments of the population.¹⁶⁰⁹ Gorczynski testified that:

[W]hen we’re thinking about how we offer assistance, you have the challenges that the neighborhoods that are probably the oldest, that have the concentration of older apartment units, older single-family homes, homes that haven’t been lead abated, that have the highest propensity, or density of people who are disabled, or elderly that stayed in original neighborhoods for example, all those folks are going to be impacted in a disparate way, and they have the least amount of resources.¹⁶¹⁰

Executive Director of Fundación Fondo de Acceso a la Justicia, Amaris Torres Rivera, indicated that if FEMA is going into an area that is known to have high poverty rates (i.e., rates above the national average as indicated by the U.S. Census Bureau), then additional resources should be provided to these individuals and areas.¹⁶¹¹ Resources should include physical resources, emotional support resources, technological resources, and housing resources. Rivera advised survivors should not be expected to be able to navigate the system since they lacked the resources to do so prior to the disaster.¹⁶¹² For instance, Rivera explained:

Among the municipalities included in the Declaration of Disaster, there are municipalities with the highest poverty rate in Puerto Rico. According to data from the Census Information Center of the University of Puerto Rico, Cayey Campus (2020), the municipality of Guánica, which was the epicenter of the most intense earthquake, boasts a poverty rate of 65%. That is, about 20% more than the poverty rate of all of Puerto Rico.¹⁶¹³

Diane Yentel, President and CEO of the National Low Income Housing Coalition, asserts that at the most fundamental level in disaster relief efforts there should be enough resources to help

¹⁶⁰⁷ Gorczynski Testimony, *Texas Briefing*, p. 82

¹⁶⁰⁸ *Ibid.*, at 55.

¹⁶⁰⁹ *Ibid.*

¹⁶¹⁰ *Ibid.*

¹⁶¹¹ Rivera Statement, at 4.

¹⁶¹² Rivera Statement, at 4.

¹⁶¹³ *Ibid.*

those impacted.¹⁶¹⁴ Those resources, as stated by Yentel, should be used first for the benefit of those with the greatest needs.¹⁶¹⁵ Yentel explained:

The recovery and mitigation process must be centered on survivors with the greatest needs and ensure equity among survivors, especially people of color, low-income people, people with disabilities, immigrants, LGBTQ [lesbian, gay, bisexual, transgender, and queer] people, and other marginalized people and communities.¹⁶¹⁶

Former San Juan Mayor Cruz Soto concurred and stated that this includes at-risk populations such as the elderly, the homeless, persons with chronic illness, adults with physical and mental disabilities, low-income people, children, and mothers with infants.¹⁶¹⁷ She told the Commission that after María, her administration also “focused our aid distribution on those living with HIV/AIDS, immigrants, elderly, homeless, those with children and/or adults with physical and emotional challenges.”¹⁶¹⁸

Community and Local Collaboration

A common theme shared by experts and impacted individuals from both Harvey and María was the reliance on the expertise of community organizations to augment or supplant government assistance.¹⁶¹⁹ When large government bureaucracies fail disaster survivors, the local organizations with cultural competency usually step in to provide assistance.¹⁶²⁰ According to testimony provided by Ben Hirsch, Co-Director of West Street Recovery:

Since Hurricane Harvey, residents in Northeast Houston have faced systemic barriers to a full recovery from flooding sustained in August 2017. In this area, populated almost exclusively by low income BIPOC people, governments (at all jurisdictional scales) have failed to deliver a level of recovery that matches those seen in affluent or middle-class communities populated primarily by white people. In my work as a grassroots disaster recovery organizer and advocate, I have seen that BIPOC and LMI [low-moderate income] households are disproportionately denied government aid.

Grassroots organizations and community groups have the potential to improve outcomes and reduce risk for marginalized people, but this opportunity is not being seized. FEMA, The General Land Office of Texas, and the Houston City government do not work well with community agencies like West Street Recovery... Officials question the legitimacy

¹⁶¹⁴ Yentel Statement, at 2.

¹⁶¹⁵ Ibid.

¹⁶¹⁶ Ibid.

¹⁶¹⁷ Cruz Soto Statement, at 7.

¹⁶¹⁸ Ibid.

¹⁶¹⁹ Gorczynski Testimony, *Texas Briefing*, p. 82

¹⁶²⁰ Ibid.

of poor peoples' complaints and are dismissive when community members expect decent levels of responsiveness. Community organizations have levels of trust that governments, who jail neighbors, allow polluting industries to locate near homes and fail to protect residents from flooding do not have. That trust is essential to a realistic assessment of conditions on the ground. To have a more just disaster recovery system in the future, governments must improve relations with community-based organizations, take a more genuine approach to collaboration and deliver aid more rapidly and with more equity.¹⁶²¹

Similarly, in Puerto Rico, much of the early relief efforts fell to local communities. Former Mayor of San Juan, Carmen Yulin Cruz Soto told the Commission:

In the Municipality of San Juan, we were prepared to make breakfast, lunch, and dinner for our employees for four months. In the end, we provided meals for them, food for 26 community soup kitchens; we provided food, water, emergency management help for approximately 65 elderly homes and elderly care type organizations."¹⁶²²

Similarly, Tania Rosario-Méndez, Executive Director, Taller Salud, shared that:

[T]he immediate needs in Loíza were met with an immediate response from the community. Women, specifically, organized themselves, surveyed the destruction and quickly got to work to ensure the safety and wellbeing of those around them. They rolled up their sleeves and set up community kitchens across Loíza to cook for hundreds of people... We did community censuses around town to better understand the urgent needs of women, men, children, senior citizens, and people with disabilities.¹⁶²³

Stakeholders recommended that community organizations be involved in the development of all disaster recovery plans. For instance, Executive Director for Ayuda Legal Puerto Rico, Ariadna Michelle Godreau Aubert stated that community-based organizations and nonprofits should be allowed to participate in the disaster infrastructure process.¹⁶²⁴ She wrote:

Public participation is essential for the success of mitigation and resilient housing infrastructure efforts. Ensuring local and regional solutions requires acknowledging the agency to local stakeholders - particularly community-based organizations- to influence the recovery process.¹⁶²⁵

¹⁶²¹ Hirsch Statement, at 1.

¹⁶²² Cruz Soto Statement, at 5-6.

¹⁶²³ Rosario-Méndez Statement, at 4.

¹⁶²⁴ Aubert Statement, at 15.

¹⁶²⁵ Ibid.

Similarly, Executive Director of Fundación Fondo de Acceso a la Justicia, Amaris Torres Rivera stated that effective partnerships should be created with FEMA, the Puerto Rican government, and community-based organizations.¹⁶²⁶ She asserts that FEMA should be collaborating and developing partnerships with local professionals, such as the Colegios de Ingenieros y Agrimensores (College of Engineers and Surveyors of Puerto Rico) who are familiar with the communities and the different geographical areas of Puerto Rico.¹⁶²⁷

Disaster survivors are also innovative and implement inventive measures in the face of an emergency. For example, recent weather-related disasters along the Gulf Coast have seen numerous informal assemblies, such as the establishment of an ad hoc “Cajun Navy” which consists of volunteers assisting in search and rescue efforts.¹⁶²⁸ Other measures may include disaster survivors utilizing electric vehicles during weather emergencies in place of gasoline-powered generators.¹⁶²⁹

Emerging Trends & Best Practices

A February 2020 GAO report concluded that in light of issues in providing disaster relief after Hurricane María, “FEMA has adapted its Public Assistance cost estimating guidance to accurately reflect costs in Puerto Rico but could improve the guidance to further enhance its reliability.”¹⁶³⁰ The report also outlined obstacles voiced by local officials to GAO. Government officials in Puerto Rico told GAO that they were not always certain about how to proceed in accordance with FEMA’s policies because they did not consistently understand what guidance was in effect.¹⁶³¹ GAO, in concurrence with DHS, recommended that FEMA revise its cost estimating guidance for its PA programs to more fully adhere to best practices.¹⁶³² The report also suggested that FEMA develop a repository of current applicable PA guidance available to all relevant recovery partners in Puerto Rico.¹⁶³³

As this report has outlined, typically, it is marginalized and underserved communities who face the greatest challenges in accessing aid. The Commission found evidence of these disparities in the aftermath of both storms. For instance, Ben Hirsch, co-director of West Street Recovery, wrote, “[b]ecause Black and Brown people are more likely to be unbanked, uninsured, have irregular employment and be disproportionately hurt by disasters, this application burden falls

¹⁶²⁶ Rivera Attachment 4, p. 3.

¹⁶²⁷ Ibid.

¹⁶²⁸ Cajun Navy Relief, “Cajun Navy Relief and Rescue,” <https://www.cajunnavyrelief.com>

¹⁶²⁹ See e.g., MotorTrend, “Innovative Approaches Texans Are Using Ford F-150 Hybrids to Power Their Frigid Homes During Winter Storm,” <https://www.motortrend.com/news/2021-ford-f-150-powerboost-hybrid-powering-texas-homes-winter-weather/>.

¹⁶³⁰ GAO, *Puerto Rico Disaster Recovery: FEMA Actions Needed to Strengthen Project Cost Estimation and Awareness of Program*.

¹⁶³¹ Ibid.

¹⁶³² Ibid.

¹⁶³³ GAO, *Disaster Assistance: FEMA Should Take Additional Actions to Strengthen Fraud Risk Management for Public Assistance Emergency Work Grants*, <https://www.gao.gov/products/gao-20-604>.

disproportionately on marginalized people.”¹⁶³⁴ FEMA stated to the Commission that it factored Puerto Rico’s poverty rate of 40 percent into the “disaster plans to address mass care and Individual Assistance recovery needs,”¹⁶³⁵ however, the agency did not detail what these plans were nor how the agency addressed the needs of low-income individuals in Puerto Rico.

The agency stated that “[d]emographic information, such as poverty rates, are considered and incorporated into planning strategies for Puerto Rico and other state, local, tribal, and territorial governments.”¹⁶³⁶ However, the agency also stated that it omits and excludes other demographic data because it is “not currently authorized to collect demographic questions such as race, ethnicity, or gender from survivors that register for Individual Assistance.”¹⁶³⁷ Without these data, FEMA is unable to provide assurance that aid and resources are being disseminated and distributed to the communities which are in the most need following a disaster.

As part of the emerging best practices, FEMA announced that it would begin to reexamine its mission and revamp some of its programs to make them more accessible and equitable.¹⁶³⁸ One of these strategies has been to redefine how the agency defines equity. FEMA defines equity as:

[T]he consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities of color, persons who belong to communities that may face discrimination based on sex, sexual orientation, and gender identity (including members of the LGBTQ+ community); persons with disabilities, persons who may face discrimination based on their religion, national origin and persons with Limited English Proficiency, and persons who live in rural areas that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.¹⁶³⁹

As one aspect of the agency’s internal evaluation, FEMA established an Equity Enterprise Steering Group and implemented a stakeholder engagement process that is tasked with developing the agency’s 2022 – 2026 Strategic Plan to focus on two initiatives to reduce barriers and increase disaster assistance opportunities for at-risk populations.¹⁶⁴⁰ According to FEMA, to

¹⁶³⁴ Hirsch Statement, at 2.

¹⁶³⁵ FEMA Response to USCCR Interrogatories, p. 28 [on file].

¹⁶³⁶ *Ibid.*

¹⁶³⁷ *Ibid.*, at 19.

¹⁶³⁸ FEMA, “FEMA Defines Equity in its Mission of Making Programs More Accessible,” Sept. 9, 2021, <https://www.fema.gov/press-release/20210909/fema-defines-equity-its-mission-making-programs-more-accessible>

¹⁶³⁹ FEMA, *Equity Action Plan*, Feb. 23, 2022, p. 2,

https://www.fema.gov/sites/default/files/documents/fema_equity-action-plan.pdf.

¹⁶⁴⁰ See José G. Baquero, Federal Disaster Recovery Coordinator (Region II), FEMA, Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico Briefing before the U.S. Comm’n on Civil Rights, December 10, 2021, at 6 (hereinafter Baquero Statement).

reflect the agency’s commitment to advancing equity, both initiatives include internal and external stakeholders and represent the first steps of many planned future initiatives.¹⁶⁴¹

As part of FEMA’s equity initiatives, the agency stated that it is focusing on identifying at-risk populations and those who are disproportionately impacted by disasters to decrease the barriers and obstacles these communities face in accessing assistance and disaster aid.¹⁶⁴² Similar to the findings in this report, the agency recognizes that these at-risk populations include—low-income neighborhoods, communities of color, people with disabilities, older adults, those with language barriers, and those living in rural and isolated areas. The agency maintains the position that it is committed to ensuring disaster assistance programs do not exacerbate existing unequal conditions.¹⁶⁴³ According to FEMA Administrator Deanne Criswell:

We’re turning a page at FEMA and infusing equity throughout our agency, programs, and policies to better serve people who face unique barriers before, during and after disasters. Systemic racism across institutions and society has sidelined generations of people of color and low-income households and that practice needs to end.¹⁶⁴⁴

To achieve these new goals, FEMA’s National Advisory Council (NAC) recommended that FEMA implement several steps:

- 1) create an “equity standard” that measures whether the agency’s grant programs increase or decrease equity over time; and
- 2) decide how to make its grants to state and local governments more equitable and that it put a new system in place by the end of 2021; and
- 3) improve Cultural Awareness in Employees and create a training program for its workers to make them more sensitive to racial diversity, equity, and inclusion; and
- 4) establish clear directives and policies for hiring a work force that “reflects the populations it serves.”¹⁶⁴⁵

The council requested that the agency create such training and hiring practices by the middle of 2021.¹⁶⁴⁶ Chauncia Willis asserts that steps like these are crucial because “[h]istorically, lack of diversity, inclusion, and equity in emergency management have contributed to deleterious disaster outcomes. Hurricane Harvey continues to reflect the inequitable practices that exacerbate pre-existing vulnerability.”¹⁶⁴⁷

¹⁶⁴¹ FEMA, “FEMA Announces Initial Initiatives to Advance Equity,” Jul. 21, 2021, <https://www.fema.gov/press-release/20210721/fema-announces-initial-initiatives-advance-equity>.

¹⁶⁴² Ibid.

¹⁶⁴³ Ibid.

¹⁶⁴⁴ Ibid.

¹⁶⁴⁵ FEMA, *National Advisory Council Report to the Administrator*.

¹⁶⁴⁶ Ibid.

¹⁶⁴⁷ Willis Statement, at 4.

As of November 2021, it did not appear that FEMA has implemented many of the recommendations that the National Advisory Council suggested. However, in a letter to the council, FEMA responded that it is

committed to implementing the President’s recent executive actions to assess and address gaps in investment in underserved communities and eliminating barriers to accessing FEMA programs. In addition, and in the spirit of those executive actions, FEMA grant-making programs conduct in-depth assessments to evaluate how program access can be made easier and more equitable. We seek direct stakeholder feedback from underserved communities. Across the agency, FEMA focuses on providing more resources, training, and forums for public engagement while working to enhance diversity and inclusion in our workforce.¹⁶⁴⁸

In response to NAC’s report, FEMA stated that it has committed to initiatives focusing on better coordination and investing in data collection and tools to measure social vulnerability and risks to communities.¹⁶⁴⁹ The agency also stated that it is committed to focusing on “what works” and “best practices” by expanding training, education, and partnership collaboration.¹⁶⁵⁰

As part of implementing these new equity initiatives to reduce barriers, complexity, and increase access, FEMA issued a Request for Information (RFI) report seeking information from the public on how the agency’s programs, regulations, and policies could better advance goals associated with equity, environmental justice, resilience, and climate change.¹⁶⁵¹ With regard to the goal of tailoring responses to the needs of local communities, the agency is in the process of reviewing and determining how best to address the 340 comments from numerous individuals, community organizations, industry associates, and state, local, and tribal governments received from April 22, 2021 to July 21, 2021.¹⁶⁵² According to FEMA, the results of this RFI helped inform the 2022-2026 FEMA Strategic Plan and further informed its approach to climate change and resiliency regarding support through its programs to communities and underserved populations.¹⁶⁵³

¹⁶⁴⁸ Deanne Criswell, “Response to National Advisory Council Report,” Oct. 15, 2021, p. 1, https://www.fema.gov/sites/default/files/documents/fema_response-2020-nac-report.pdf.

¹⁶⁴⁹ Ibid.

¹⁶⁵⁰ Ibid.

¹⁶⁵¹ FEMA *National Advisory Council Report to the Administrator*.

¹⁶⁵² FEMA, *FEMA Request for Information Summary Report*, Aug. 2021, https://www.fema.gov/sites/default/files/documents/fema_rfi-summary-report_climate-change-and-equity_20210813.pdf.

¹⁶⁵³ FEMA, “Equity,” last updated Apr. 21, 2022, <https://www.fema.gov/emergency-managers/national-preparedness/equity>.

Policy and Planning Considerations

Many of FEMA's policies and practices in administering disaster recovery and relief following Hurricanes Harvey and María have not considered the needs of vulnerable communities. Thus, some survivors have struggled to recover. For instance, in her written testimony to the Commission, Brittany Perrigue Gomez recounted one story of a survivor her organization assisted after Harvey:

Richard, a senior and disabled veteran, and his wife Mary Garcia are survivors of Hurricane Harvey who were unable to qualify for disaster assistance to repair their home due not having a clear title. In 1996, Mr. Garcia entered an executory contract to purchase their home and fully paid the contract price by 2000. After payment Richard received a receipt as evidence of his payments. The Garcias never received a deed to the property which created a myriad of legal problems for him and his family. The Garcias were unable to pay the property taxes because they did not have traditional homeownership documents and they were unable to qualify for disaster assistance from FEMA, SBA, or HHSC to repair their home or replace their personal property.

TRLA attorneys sued and successfully won the Garcias' case, obtaining the proof of ownership they would need to receive assistance from FEMA, but it was too late. The deadline for assistance had passed. After Hurricane Harvey, the Garcias' home was destroyed, but they remained in their home because they had nowhere else to go. Their roof was so damaged that it would leak on them while they were sleeping.¹⁶⁵⁴

Data in this report have shown that the inadequate (or in some cases, lack of) assistance from the federal government means these communities' resources are strained from one disaster to another and are disparately impacted by these disasters.¹⁶⁵⁵ The following sections provide examples of policy changes and recommendations as well as emerging best practice suggestions from disaster relief and recovery experts, community members, and impacted persons.

Rapid Aid Distribution

In the immediate aftermath of a disaster, people struggle with limited access to food, water, and shelter.¹⁶⁵⁶ It is paramount that assistance and resources arrive at the impacted area(s) promptly.¹⁶⁵⁷ Depending on the type of disaster, this aid can include food, water, medical supplies and first aid, resources to secure property (e.g., tarps, generators, plywood), safe

¹⁶⁵⁴ Perrigue Gomez Statement, at 4 (internal citations omitted).

¹⁶⁵⁵ See e.g., *supra* notes 533-**Error! Bookmark not defined.** (discussing civil rights concerns).

¹⁶⁵⁶ See e.g., Ready, "Build a Kit," <https://www.ready.gov/kit>.

¹⁶⁵⁷ American Red Cross Guide to Services, pp. 5, 12,

https://www.redcross.org/content/dam/redcross/atg/PDF_s/GuideToServices.pdf.

shelters, and equipment for clearing debris, among other items.¹⁶⁵⁸ Aid also includes human resources such as physical assistance in assessing the damage¹⁶⁵⁹ caused by the disaster, and medical aid.¹⁶⁶⁰ Additionally, both former San Juan Mayor Carmen Yulin Cruz Soto and Ariadna Michelle Godreau Aubert recommended that the federal food aid provided to disaster survivors should be nutritious,¹⁶⁶¹ unlike some meals provided to María survivors in Puerto Rico.¹⁶⁶²

At the Commission's December 2021 briefing, Puerto Rican stakeholders agreed that when FEMA assistance is made available by the President of the United States, FEMA should have a clear roadmap, clear guidelines, and standards for assessing the needs of the survivors.¹⁶⁶³ Moreover, as stated by Executive Director of Ayuda Legal Puerto Rico, Ariadna Michelle Godreau Aubert, this assistance needs to arrive quickly and have clear standards to ensure accessibility.¹⁶⁶⁴

Reducing Bureaucracy

Policy Director and General Counsel of Centro para la Nueva Economía, Sergio Marxuach emphasized that the focus of disaster relief should be on getting assistance to survivors as soon as possible. Overall, María survivors did not experience efficient relief delivery from FEMA. In his statement to the Commission, he explained:

The initial disbursement of emergency assistance for individuals after Hurricane María was marred by bureaucratic bungling and mismanagement. For example, a year after Hurricane María, the portion of total funds obligated for individual assistance programs for Hurricane María's disaster victims (17%) was significantly lower than the portion obligated for individual assistance for the victims of Hurricane Harvey (47%) or Hurricane Irma (32%).¹⁶⁶⁵

Director of the University of Puerto Rico's Resiliency Law Center, Adi Martínez-Román also asserted that Puerto Rico's recovery was unnecessarily delayed due to "bureaucratic layers in processes, which [were] exacerbated by disconnected plans and convoluted guidelines that result in lack of effectiveness, transparency, and active discrimination against impoverished and vulnerable communities."¹⁶⁶⁶

¹⁶⁵⁸ American Red Cross, Hurricane Maria One-Month Update, Nov. 2017, p. 1.

<https://www.redcross.org/content/dam/redcross/imported-pdfs/hurr-maria-one-month-update.pdf>.

¹⁶⁵⁹ FEMA Home Inspections: What to Expect, Oct. 15, 20212, <https://www.fema.gov/fact-sheet/fema-home-inspections-what-expect>.

¹⁶⁶⁰ American Red Cross "Hurricane Maria One-Month Update," at 2.

¹⁶⁶¹ Cruz Soto Statement, at 5; Aubert Statement, at. 8.

¹⁶⁶² See, *supra* notes 1215-1224.

¹⁶⁶³ Cruz Soto Statement, at 7.

¹⁶⁶⁴ Aubert Statement, at 2.

¹⁶⁶⁵ Marxuach Statement, at 3.

¹⁶⁶⁶ Martínez-Román Statement, at 8.

Both Amaris Torres Rivera and Diane Yentel commented that FEMA should implement an “obstacle-free” application process and remove all inflexible and arbitrary requirements, rigid interpretations of rules, and confusing and bureaucratic processes.¹⁶⁶⁷ Regarding HUD, Marxuach wrote:

A report issued by HUD’s Office of Inspector General [] on April 20, 2021, found that the Trump administration set up several bureaucratic obstacles that substantially slowed down the process for disbursing these funds.¹⁶⁶⁸ The OIG also found that HUD’s decision to revise its template for CDBG-DR grant agreements was a factor in delaying disbursement of this second tranche of funding for unmet needs to PRDOH [Puerto Rico Department of Housing] ...¹⁶⁶⁹

Additionally, former Mayor Cruz Soto commented that FEMA’s “Standard Operating Procedures should be adapted to get their relief operations off the ground [in] a timely fashion;”¹⁶⁷⁰ and one way this could be accomplished is for FEMA to develop a road map or blueprint for distributing aid during a catastrophic disaster.¹⁶⁷¹ Executive Director of Liga de Ciudades, Cristina Miranda also recommended that the amount of time needed to complete the reimbursement process of FEMA funds should be reduced.¹⁶⁷² Miranda stated that “Initially, COR3 [Central Office for Recovery, Reconstruction, and Resiliency] had an eight-stage process that...could take an average of 240 days. They have recently...reduced [it] to four stages, with an average of 60 days...”¹⁶⁷³

Considering the delays in funding,¹⁶⁷⁴ panelists maintained that FEMA should take several steps during a disaster in order for aid to reach survivors more expediently. For example, Secretary of State Marrero shared that if the territory does not have an emergency fund, there should be an emergency fund made available to address the immediate needs of the disaster.¹⁶⁷⁵ Diane Yentel, President/CEO, National Low Income Housing Coalition, recommended that FEMA should create a standing disaster recovery fund that can quickly disperse initial recovery funding to disaster-stricken areas without waiting for congressional approval.¹⁶⁷⁶

¹⁶⁶⁷ Rivera Attachment 4, at 2; Yentel Statement, at 6.

¹⁶⁶⁸ Marxuach Statement, at 5.

¹⁶⁶⁹ *Ibid.*, at 6.

¹⁶⁷⁰ Cruz Soto Statement, at 3.

¹⁶⁷¹ *Ibid.*, at 7.

¹⁶⁷² Miranda Statement, at 4.

¹⁶⁷³ *Ibid.*

¹⁶⁷⁴ *See, supra* notes 686, 1163.

¹⁶⁷⁵ Marrero Statement, at 1.

¹⁶⁷⁶ Yentel Statement, at 23.

Home Ownership Verification

As this report has discussed in detail, documenting and verifying homeownership status has consistently been a barrier to receiving aid post-disaster, especially for those who do not possess a traditional deed.¹⁶⁷⁷ Brittany Perrigue Gomez, Disaster Benefits Team Manager for Texas RioGrande Legal Aid testified that disaster survivors who live on heirship properties often struggled to receive aid from FEMA. She stated that “[t]o be clear, these survivors are homeowners who were always eligible for FEMA housing assistance but have been excluded from the program because they lack documentation that fills a box on FEMA’s checklist- this is administrative red tape.”¹⁶⁷⁸

In September 2021, FEMA adapted its policies to make it easier for disaster survivors to prove ownership and occupancy of damaged primary residences.¹⁶⁷⁹ Broadly these changes consisted of 1) expanding forms of documentation to prove ownership/occupancy for homeowners and renters; 2) providing expanded housing assistance and other needs assistance funding, to include financial assistance for homes with mold-caused damage and homes that are habitable but require cleaning and sanitizing; and 3) expanding financial assistance for disaster-caused disability.¹⁶⁸⁰

FEMA’s Administrator Deanne Criswell wrote that:

This is a culture shift for the agency and we are only just beginning. These new changes reduce the barriers to entry for our Individual Assistance program and will help us to provide more equitable disaster support to all survivors, specifically for underserved populations. Heading into the peak of hurricane season with 12 named Atlantic storms [as of September 2, 2021], and as wildfires strengthen out west, FEMA continues to put equity at the forefront of how we support survivors before, during, and after disasters.¹⁶⁸¹

In response to these changes, Perrigue Gomez stated that FEMA acknowledged that

underserved communities, including individuals with low income and people of color, struggle more when recovering from disasters in comparison to communities with greater resources. The changes are a positive step in the right direction that will make FEMA assistance more accessible to disaster survivors. [However], FEMA did not broaden their ownership standard but only the documentation it may accept. The language indicates

¹⁶⁷⁷ See, *supra* notes 1323-1326.

¹⁶⁷⁸ Perrigue Gomez Statement, at 4.

¹⁶⁷⁹ FEMA, “How to Document Home Ownership and Occupancy for FEMA,” <https://www.fema.gov/press-release/20210920/how-document-home-ownership-and-occupancy-fema>.

¹⁶⁸⁰ FEMA, “FEMA Makes Changes to Individuals Assistance Policies to Advance Equity for Disaster Survivors,” Sept. 2, 2021, <https://www.fema.gov/press-release/20210902/fema-makes-changes-individual-assistance-policies-advance-equity-disaster>.

¹⁶⁸¹ *Ibid.*

FEMA is not required to accept the self-declarative statement only that it may. FEMA has limited the self-declarative statement to heirship properties only, which is helpful but does not address other homeownership barriers that low-income disaster survivors often face...¹⁶⁸²

These changes are an important step, because as Kathy Payton, President and CEO of the Fifth Ward Community Redevelopment Corporation, a non-profit community organization specializing in meeting the needs of largely low-moderate income Black and Latinx residents in Houston's Fifth Ward explains "[r]ecovery for vulnerable families [looks] a lot different than it does for more affluent neighborhoods."¹⁶⁸³ Payton testified that "residents in those [more affluent] areas have been more successful at getting federal money."¹⁶⁸⁴

Similarly, The Texas General Land Office (GLO) wrote:

Lower income communities, smaller communities, and low- and moderate- income persons often suffer the most severe and enduring effects after large-scale disasters because resilience is more difficult to attain for them than it is for more affluent and larger communities, which tend to have more local recovery resources immediately following a disaster.

People on fixed incomes or earning minimum wage do not have the resources required to repair a roof damaged by a hurricane. Communities with lower income populations do not have the tax base needed to make infrastructure repairs. For federal funds to be most effective, reducing bureaucracy and shortening the wait time for assistance is key.¹⁶⁸⁵

As the report has documented, home verification was a significant hurdle for disaster survivors in Puerto Rico following María.¹⁶⁸⁶ The Commission received considerable amounts of testimony regarding this issue. For instance, Executive Director of Ayuda Legal Puerto Rico, Ariadna Michelle Godreau Aubert stated:

As we have reiterated on several occasions, a title deed cannot be a condition to safe housing and recovery... In the aftermath of Hurricane María, FEMA applied a restrictive and incorrect interpretation of federal disaster regulations that defined "owner" broadly. Consequently, nearly 77,000 families were excluded from receiving assistance because of their inability to prove ownership. Nothing in

¹⁶⁸² Perrigue Gomez Statement, at 3-4 (internal citations omitted).

¹⁶⁸³ Rebecca Hersher and Robert Benincasa, "How Federal Disaster Money Favors The Rich," *NPR*, Mar. 5, 2019, <https://www.npr.org/2019/03/05/688786177/how-federal-disaster-money-favors-the-rich>.

¹⁶⁸⁴ *Ibid.*

¹⁶⁸⁵ Texas General Land Office Statement, p. 1 [on file].

¹⁶⁸⁶ *See, supra* notes 1027-1030.

Puerto Rico’s laws and regulations require homeowners to register their properties.¹⁶⁸⁷

According to testimony provided by FEMA’s Federal Disaster Recovery Coordinator of Region II (which oversees recovery efforts over Puerto Rico), José G. Baquero wrote:

In an effort to facilitate Individual Assistance eligibility requirements related to proof of ownership and get Puerto Rico survivors on track with their personal recovery, FEMA made changes to standard documentation requirements to accommodate local circumstances and provided funding to various legal organizations to help the survivors with their applications or appeals. The resulting “Sworn Declaration” was developed by legal aid groups, including Ayuda Legal Huracán María, Fundación Fondo de Acceso a la Justicia, and Servicios Legales de Puerto Rico, among others. The Sworn Declaration provided survivors who had been previously denied financial assistance due to unverified home ownership with an additional method to verify ownership on appeal.¹⁶⁸⁸

The change in FEMA’s homeownership verification policy in the Individual Assistance Program and Policy Guide,¹⁶⁸⁹ and allowing for disaster survivors to utilize the sworn declarations was lauded as a positive step toward getting people the assistance that they needed. However, as discussed in Chapter 3, FEMA did not notify survivors of this policy shift and inform them that they could reapply or appeal the previous denial.¹⁶⁹⁰ As of the writing of this report, the agency has taken no action to compensate the thousands of citizens of Puerto Rico who were denied relief. Therefore, experts recommend Congressional action be taken.¹⁶⁹¹ Several proposed legislative bills are in review, which will be discussed below.

The confusion regarding homeownership and verification for survivors demonstrates the need for FEMA to adjust its policy requirements to meet the diverse geographic and social realities of the United States, including its several territories.¹⁶⁹² Diane Yentel, President and CEO, National Low Income Housing Coalition, wrote:

FEMA’s rigid title documentation requirements, for example, have for decades barred low-income survivors from FEMA assistance. Until very recently, FEMA required disaster survivors to provide title documentation to prove eligibility for the Individual Assistance (IA) program and other recovery aid, even though its own guidance on

¹⁶⁸⁷ Aubert Statement, at 9.

¹⁶⁸⁸ Baquero Statement, at 3 (internal citations omitted).

¹⁶⁸⁹ FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, May 2021, https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

¹⁶⁹⁰ See, *supra* notes 1043-1045.

¹⁶⁹¹ Martínez-Román Statement, at 5-6.

¹⁶⁹² Rosario-Méndez Statement, at 3.

Individual and Household Assistance allows alternative documentation of ownership.... FEMA attempted to apply rules for aiding predicated on a system of land title ownership not practiced in Puerto Rico, resulting in tens of thousands of denials of assistance.¹⁶⁹³

As such Ariadna Michelle Godreau Aubert recommends that FEMA and other recovery funds should adopt and abide by policies that are equitable and promote access, and not hinder survivors' rights.¹⁶⁹⁴

Moreover, to more fully address the needs of survivors, experts posit that FEMA needs to be willing to adapt its policies to allow for flexibility to address regional challenges.¹⁶⁹⁵ For instance, Yentel asserts that FEMA needs to recognize that policies that apply in the continental U.S. may not be applicable according to territorial law.¹⁶⁹⁶ As such, Executive Director of Fundación Fondo de Acceso a la Justicia, Amares Torres Rivera recommended that FEMA officials and its inspectors should be trained in the laws of Puerto Rico.¹⁶⁹⁷ She posited that they should be aware of Puerto Rico's local infrastructure and important cultural aspects (e.g., ownership verification for homes).¹⁶⁹⁸ Rivera also recommended that FEMA train its "officials in FEMA's regulation and operating procedures that prevent [Disaster Recovery Center] DRC/[Disaster Case Management] DCM employees from refusing to receive documents or expressing the validity of legal documents."¹⁶⁹⁹

The Puerto Rico Department of Housing's R3 program established new guidelines in February 2022 to reasonably accommodate households lacking ownership documentation.¹⁷⁰⁰ Survivors can complete an "Ownership Certification" that includes the length of time the applicant lived at the disaster-damaged location, explain the circumstances preventing standard verification, and certify that there are either no other parties that have the right to claim ownership, or that any additional parties with an ownership claim have agreed to participate as co-applicants or cannot be located.¹⁷⁰¹ Ariadna Michelle Godreau Aubert of Ayuda Legal Puerto Rico heralded this as a win, in that families no longer had to wait months or years for their homeownership to be accepted, or for the need of a "perfect" title in order to "secure a safe roof."¹⁷⁰² However, the

¹⁶⁹³ Yentel Statement, at 8.

¹⁶⁹⁴ Aubert Statement, at 9, 11.

¹⁶⁹⁵ Aubert Statement, at 2.

¹⁶⁹⁶ Yentel Statement, at 8.

¹⁶⁹⁷ Rivera Statement, Attachment 4, at 3.

¹⁶⁹⁸ Ibid, at 2.

¹⁶⁹⁹ Ibid, at 3.

¹⁷⁰⁰ Puerto Rico Dep't of Housing, *CDBG-DR Program Guidelines: Home Repair, Reconstruction, or Relocation Program (R3 Program)*, Updated Feb. 8, 2022, p. 19, [https://cdbg-dr.pr.gov/en/download/r3-latest-landing/?ind=1644359978566&filename=R3%20PROGRAM%20GUIDELINES%20EN%20\(V.11\).pdf&wpdmdl=15641&refresh=6231e17cda3331647436156](https://cdbg-dr.pr.gov/en/download/r3-latest-landing/?ind=1644359978566&filename=R3%20PROGRAM%20GUIDELINES%20EN%20(V.11).pdf&wpdmdl=15641&refresh=6231e17cda3331647436156).

¹⁷⁰¹ Ibid.

¹⁷⁰² Commission Correspondence with Ariadna Michelle Godreau Aubert, Mar. 7, 2022 [on file].

changes in the guidelines also “favor relocation with little consideration to mitigation options.”¹⁷⁰³

Applying for Aid

Across all three of the Commission’s briefings, there was unanimous stakeholder agreement that FEMA assistance should be free of impediments and roadblocks. One step in the disaster recovery process where this is particularly salient is the application process. The speed with which disaster survivors can successfully navigate the application process to meet eligibility requirements is extremely important for recovery. Payton asserts that

families who are more apt to be able to respond to that [funding] will do so quickly, will do so more efficiently, and the funds will be available on a first come, first serve basis. Families who cannot, will be left behind again.¹⁷⁰⁴

In efforts to make the application process more efficient and accessible, some survey respondents from FEMA’s Request for Information (RFI) report recommended that FEMA employ a “one-stop shop” portal for the intake of applications for all federal disaster assistance. This would also restructure and tailor access to services for those with disabilities.¹⁷⁰⁵ Francisco Sánchez, Jr., President of the Emergency Management Association of Texas explained to the Commission that FEMA’s funding strategies are often difficult for survivors to navigate. Therefore, survivors may not receive the funds which they qualify for.¹⁷⁰⁶ Sánchez wrote:

Over and over, we heard stories directly from residents, directly and through our partners, of the difficulties understanding the application and aid approval processes. It is difficult to understand and, frankly, discouraging. The process needs to be simple, transparent, and completely trackable so that residents understand the qualifications, the process, and their status in that system. More than that, a single aid portal that automatically initiates consideration for all available aid from FEMA, SBA and the Department of Housing and Urban Development would make the application experience less stressful, and less repetitive, for users ... greater transparency would [also] be beneficial in allowing disaster survivors to understand how decisions are made, FEMA should make public their rubric and assistance determination process before individual assistance decisions are made. Residents deserve a fair and understandable explanation of the available benefits and qualifications.¹⁷⁰⁷

¹⁷⁰³ Ibid.

¹⁷⁰⁴ Hersher and Benincasa, “How Federal Disaster Money Favors The Rich”: *See also*, Thurman Bill Bartie, Mayor of Port Arthur, Texas, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Nov. 10, 2020 [on file].

¹⁷⁰⁵ FEMA, *Request for Information Summary Report*.

¹⁷⁰⁶ Sánchez Statement, at 3.

¹⁷⁰⁷ Ibid.

RFI survey respondents echoed these sentiments and centered many of their concerns on the difficulty of navigating the complex and multi-stage application process. They offered suggestions regarding the streamlining and promoting of clear instructions for documentation requirements.¹⁷⁰⁸ Respondents suggested that FEMA implement a single-intake application process for all federal disaster assistance to streamline relief and make the process less confusing and burdensome.¹⁷⁰⁹ Respondents also suggested that this process should include ways to aid disaster survivors in navigating applications for assistance from other federal agencies that are involved in relief efforts (e.g., HUD, SBA) to involve as few steps as possible. This change would reduce the administrative burden for disaster survivors and ensure that they submit applications to the correct agency.¹⁷¹⁰ RFI respondents assert that these restructuring efforts should also specifically elevate and prioritize the needs and concerns of the elderly and those with disabilities throughout the disaster assistance process.¹⁷¹¹

Additionally, RFI survey respondents suggested ways FEMA's mitigation and preparedness grant programs can be improved. Some of the major programs involved including Building Resilient Infrastructure and Communities (BRIC), Hazard Mitigation Grant Program (HMGP), and Flood Mitigation Assistance (FMA). Respondents expressed concerns regarding the complexity of the application processes and suggested providing more education and technical support for communities to allow for a more equitable allocation of competitively based funding.¹⁷¹²

Other recommendations included that FEMA work with Congress to increase funding for all of its preparedness grant programs to reduce risk, give increased attention to rural areas and their specific needs following a disaster, and better integrate agency preparedness programs with its recovery and mitigation programs.¹⁷¹³

Moreover, community advocates argue that there are discrepancies in the quality of case management that FEMA provides based on race, educational level, and socioeconomic status.¹⁷¹⁴ Better case management is crucial, since disaster relief funds are finite. Officials explain that during Harvey, federal "funds dried up" before effectively aiding some communities' recovery efforts.¹⁷¹⁵ Texas' GLO agrees that more work needs to be done to ensure equitable disaster recovery, writing:

¹⁷⁰⁸ FEMA *Request for Information Summary Report*.

¹⁷⁰⁹ *Ibid.*

¹⁷¹⁰ *Ibid.*

¹⁷¹¹ *Ibid.*

¹⁷¹² *Ibid.*

¹⁷¹³ *Ibid.*

¹⁷¹⁴ Thurman Bill Bartie, Mayor of Port Arthur, Texas, *Texas Advisory Committee to the U.S. Commission on Civil Rights Web Briefing*, Nov. 10, 2020 [on file].

¹⁷¹⁵ *Ibid.*

In order to ensure that the communities which need help the most are, in fact, being served as quickly as possible, it is essential that the United States Congress codifies the CDBG-DR program into statute. The codification of the CDBG-DR program is critical to improving and streamlining positive outcomes in long-term disaster recovery. As currently implemented, every disaster allocation must have a new set of regulations developed before funds are available to states for use.¹⁷¹⁶

Individuals with Disabilities

In 2021, the CDC reported that approximately 25.6 percent of Texans have a disability which means that approximately 1.25 million individuals with a disability may have been directly affected by Harvey.¹⁷¹⁷ Experts at the Commission's October briefing outlined several strategies that FEMA could have implemented post-Harvey, and potentially should implement in the future to ensure that individuals with disabilities receive the aid that they deserve.

Professor of Educational Psychology and Assistant Director of the Center on Disability and Development Laura Stough explained to the Commission that FEMA could have better anticipated the number of residents with disabilities affected by Harvey and their functional needs.¹⁷¹⁸ For instance, publicly available data from the American Community Survey (ACS) provides demographic and geographic information for areas with at least 20,000 people.¹⁷¹⁹ The ACS also provides estimates of individuals with disabilities in the community with the following characteristics: difficulties hearing, vision, cognitive, ambulatory, self-care, and need for supports in independent living. For example, data for Bastrop County, Texas show that among the 11.1 percent of the total county residents with a disability, 7.6 percent have an ambulatory difficulty and 3.5 percent have hearing difficulties. FEMA, therefore, could have anticipated that 7.6 percent of those affected by Harvey would need mobility and/or transportation assistance; similarly, 3.5 percent would need augmented communication or sign language when planning disaster response.¹⁷²⁰

To ensure that individuals with disabilities received equitable treatment and access to support, FEMA could have taken steps to preposition medical and accessible equipment that is needed during rescue and response efforts. Stough explained to the Commission that the amount of equipment to address disability-related needs can be estimated and deployed in anticipation of a disaster. While individuals and families will be prepared with their own supplies, research shows

¹⁷¹⁶ Texas General Land Office Statement, p. 1.

¹⁷¹⁷ Center on Disability and Development (2021). *Directory of community services for people with disabilities*. Project REDD: Research and education on disability and disaster. Texas A&M University, <https://dcr.tamu.edu/>.

¹⁷¹⁸ Stough Statement, at 1.

¹⁷¹⁹ American Community Survey, <https://www.census.gov/programs-surveys/acs>.

¹⁷²⁰ Stough Statement, at 1.

that individuals with disabilities are sometimes unlikely to be prepared in anticipation of disasters.¹⁷²¹

In addition to better utilizing data, there are several grants administered by FEMA that could be prioritized to aid in disaster relief and recovery efforts for people with disabilities. For instance, FEMA could use Hazard Mitigation Assistance grants to reduce the vulnerability of communities to disasters and their effects.¹⁷²² In 2020 alone, \$660 million was distributed to communities through these grants;¹⁷²³ and since neighborhoods with higher proportions of residents with disabilities were more likely to experience Harvey-induced flooding,¹⁷²⁴ FEMA could use these grants to prioritize improving the public infrastructure in neighborhoods with higher proportions of individuals with disabilities.¹⁷²⁵ Stough explained to the Commission that:

Given the disproportionate effect of disasters on people with disabilities, and as people with disabilities often depend on public housing, transportation, and medical care to a greater extent than do others, hardening public infrastructure against hazards is particularly critical for this population. Infrastructure, particularly housing and buildings where people with disabilities live, work, or are educated, should be strengthened to better withstand the impact of environmental hazards- or even moved to new locations. This point is particularly critical with respect to people living in congregate care facilities: during Hurricane Harvey, several assisted living facilities were flooded, directly exposing residents to rising waters and exacerbating negative health conditions in some.¹⁷²⁶

Preparedness Grants, which support the preparedness of both citizens and first responders, are also available.¹⁷²⁷ In 2020 alone, these grant programs totaled nearly \$1 billion.¹⁷²⁸ Research shows that households that include people with disabilities may not have emergency plans or

¹⁷²¹ Jeffrey W. Bethel, Amber N. Foreman, and Sloane Burke, “Disaster preparedness among medically vulnerable populations,” *American Journal of Preventive Medicine*, 2011, vol. 40, no. 2, 139-143, <https://pubmed.ncbi.nlm.nih.gov/21238861/>; Krysten Chin, Phyllis Tan, Tracey Simmons, “A mixed-method analysis: Disaster preparedness of families with children with access and functional needs,” *American Journal of Disaster Medicine*, 2020, vol. 15, no. 3, 187-197, <https://www.wmpllc.org/ojs/index.php/ajdm/article/view/2837>.

¹⁷²² FEMA, “Hazard Mitigation Assistance Grants,” Nov. 1, 2021, <https://www.fema.gov/grants/mitigation>.

¹⁷²³ FEMA, “FEMA Opens \$660 Million Grant Application Process,” Mar. 18, 2021, <https://www.fema.gov/press-release/20200929/fema-opens-660-million-grant-application-process>.

¹⁷²⁴ Jayajit Chakraborty, Sara E. Grineski, and Timothy W. Collins, “Hurricane Harvey and people with disabilities: Disproportionate exposure to flooding in Houston, Texas,” *Social Science & Medicine*, vol. 226, (2019), <https://par.nsf.gov/servlets/purl/10132225>.

¹⁷²⁵ Stough Statement, at 1-2.

¹⁷²⁶ American Association of Retired Persons, “A snapshot of Texas assisted living facility care during Hurricane Harvey with policy recommendations,” (2018), <https://cdn.states.aarp.psdops.com/3e/0b/6403554811b2b6b4e85b31a77ea5/2018-08-left-adrift-report.pdf>; see also, Stough Statement, at 2.

¹⁷²⁷ FEMA, “Preparedness Grants,” Jul. 16, 2021, <https://www.fema.gov/grants/preparedness>.

¹⁷²⁸ Ibid.

basic emergency supply kits in place in anticipation of a disaster.¹⁷²⁹ A nationwide survey found only 25.8 percent of people with a disability believed they were “very prepared” for an emergency while 20.7 percent reported not being prepared at all.¹⁷³⁰ Parents of children with disabilities particularly would benefit from targeted outreach and preparedness education by emergency management.¹⁷³¹ Stough posited that given the disproportionate impact of disasters on individuals with disabilities, Preparedness Grants could require applicants to target preparedness in households with individuals with disabilities, as well as to better prepare first responders to respond to the needs of individuals with disabilities.¹⁷³²

Many disaster experts also claimed that FEMA did not deploy enough trained personnel to effectively aid survivors following Harvey or María.¹⁷³³ Research shows that this may be particularly true when it comes to aiding people with disabilities. For example, studies show that emergency managers and other personnel assisting in disasters have limited knowledge regarding disability-related needs.¹⁷³⁴ Moreover, people with disabilities are also more likely to be overlooked by emergency personnel and shelter workers.¹⁷³⁵ After a disaster occurs, FEMA deploys Disability Integration Advisors and Disability Integration Specialists to locations where disasters have occurred; however, the number of these trained personnel is limited. Dr. Laura Stough, Professor of Educational Psychology and Assistant Director of the Center on Disability and Development claimed that the number of trained personnel deployed in the wake of Harvey was “insufficient” to address the needs of the community.¹⁷³⁶

FEMA’s Office of Disability Integration and Coordination (ODIC) helps FEMA deliver the agency’s shared mission of helping people before, during, and after disasters in ways that maximize the inclusion of, and accessibility for, people with disabilities, including providing

¹⁷²⁹ Laura Stough and Ilan Kelman, “People with disabilities and disasters,” In H. Rodriguez, J. Trainor, & W. Donner (Eds.), *Handbook of disaster research* (2nd ed. pp. 225-242), 2018, Springer.

¹⁷³⁰ Diane Smith and Stephen Notaro, “Personal emergency preparedness for people with disabilities from the 2006-2007 Behavioral Risk Factor Surveillance System,” *Disability Health Journal*, vol. 2, no. 2, 2009, <https://pubmed.ncbi.nlm.nih.gov/21122746/>.

¹⁷³¹ Elizabeth McAdams and Laura M. Stough, “Psychological effects of the 2017 California Wildfires on children and youth with disabilities,” *Research in Developmental Disabilities*, vol. 114, 2021; Susan Wolf-Fordham, Carol Curtin, Melissa Maslin, Linda Bandini, and Charles D. Hamad, “Emergency preparedness of families of children with developmental disabilities: What public health and safety emergency planners need to know,” *Journal of Emergency Management*, vol. 13, no. 1, 2015, 7-18, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4487877/>.

¹⁷³² Stough Statement, at 2.

¹⁷³³ See, *supra* notes 719, 729.

¹⁷³⁴ Jennifer Rowland, Glen W. White, Michael H. Fox, and Catherine Rooney, “Emergency response training practices for people with disabilities,” *Journal of Disability Policy Studies*, vol. 17, no. 4, 2007, 216–222, <https://psycnet.apa.org/record/2007-04774-001>.

¹⁷³⁵ John Twigg, Maria Kett, Helen Bottomley, Lin Tze Tan, and Hussam Nasreddin, “Disability and public shelter in emergencies,” *Environmental Hazards*, 2011, vol. 10, no. 3-4, 248–261, <https://www.tandfonline.com/doi/abs/10.1080/17477891.2011.594492>.

¹⁷³⁶ Stough Statement, at 2-3.

technical assistance and training on disability-related issues.¹⁷³⁷ FEMA employees have had access to Independent Study 368 (IS-368), Integrating the Needs of People with Disabilities into Disaster Operations, for several years.¹⁷³⁸ It was designated a required course for all FEMA employees beginning in 2018. FEMA course E/L 197, *Integrating Access and Functional Needs into Disaster Preparedness*, is a course offered to disability organizations, emergency managers, and others with a role to play in emergency and disaster preparedness related to people with disabilities.¹⁷³⁹ The IS-368 and the E/L 197 courses are currently under reconstruction.¹⁷⁴⁰ The aim of the E/L 197 course is to teach community planners how to incorporate the needs of people with disabilities into revised or new emergency operations plans.¹⁷⁴¹ FEMA indicated to the Commission that it is continually evaluating programs and practices to address equity of service and inclusive emergency management practices for people with disabilities, and is creating new and relevant courses for FEMA staff to deploy to disasters and serve as Disability Integration Advisors and Disability Integration Specialists.¹⁷⁴²

Disability scholars state that while the course provides good information on disability inclusion, it lacks depth and specificity and does not include recent findings regarding the experiences of people with disabilities after a disaster.¹⁷⁴³ As above, the course is optional. A research study conducted by Michael Fox and colleagues studied disaster preparedness and response for persons with mobility impairments and found that few emergency managers completed the course.¹⁷⁴⁴

FEMA stated to the Commission that during Harvey, it utilized Disability Integration Advisors and Sign Language interpreters throughout Texas to support communities.¹⁷⁴⁵ After Harvey, FEMA's National Response Coordination Center began utilizing the CDC's Social Vulnerability Index to develop planning considerations for future disasters to better account for and integrate the needs of people with disabilities into all its programs and services, for individuals who are deaf or hard of hearing, those requiring accessible bathroom and shower facilities, low stimulation environments, and those who rely on equipment powered by electricity.¹⁷⁴⁶

¹⁷³⁷ FEMA, "Office of Disability Integration and Coordination," Jun. 11, 2021, <https://www.fema.gov/about/offices/disability>.

¹⁷³⁸ Commission Correspondence with FEMA, May 11, 2022 [on file].

¹⁷³⁹ *Ibid.*

¹⁷⁴⁰ *Ibid.*

¹⁷⁴¹ *Ibid.*

¹⁷⁴² *Ibid.*

¹⁷⁴³ Stough Statement, at 3.

¹⁷⁴⁴ Michael H. Fox, Glen W White, Catherine Rooney, and Jennifer L. Rowland, "Disaster preparedness and response for persons with mobility impairments," *Journal of Disability Policy Studies*, vol. 17, no. 4, 2007, 196–205, <https://researchexperts.utmb.edu/en/publications/disaster-preparedness-and-response-for-persons-with-mobility-imp>.

¹⁷⁴⁵ FEMA Response to USCCR Interrogatories, p. 50 [on file].

¹⁷⁴⁶ *Ibid.*, at 41.

Conversely, FEMA told the Commission that it was not aware of any requested accommodations for individuals with disabilities that could not be provided during María.¹⁷⁴⁷ However, the Commission heard testimony about several issues and recommendations for FEMA to implement to better serve individuals with disabilities in disaster situations. For instance, Carmen Yulin Cruz Soto asserted that FEMA's staff was "incapable" of providing services to the deaf community and did not consider that survivors may have different levels of internet proficiency and access.¹⁷⁴⁸ Similarly, Amaris Torres Rivera recommended that FEMA should have Puerto Rican Spanish oriented-American Sign Language interpreters on televised communication or personal communication for survivors who were deaf.¹⁷⁴⁹ Additionally, Diane Yentel asserted that some unhoused individuals with disabilities were involuntarily committed to hospitals instead of taken to fully accessible shelters. Therefore, she recommended that FEMA institute "emergency plans that address how local officials can reach those with disabilities."¹⁷⁵⁰

As with Harvey, survivors of María who rely on electricity for their medical needs were not prioritized and often suffered delays in receiving the attention or services they needed to survive.¹⁷⁵¹ Carla Minet recommended that FEMA should be able to share patient information with community organizations to ensure that individuals who are dependent on electricity for their medical equipment receive immediate aid.¹⁷⁵² However, due to HIPAA, FEMA is legally bound from sharing patient information with non-healthcare providers.¹⁷⁵³

Minet wrote that in June 2020, the Puerto Rican Health Department gave the local emergency management agency information regarding the number of electricity dependent persons in each municipality which comes from the publicly accessible HHS database of Medicare beneficiaries called emPOWER Map, and this information was shared with the mayors across the Island.¹⁷⁵⁴ Minet explained that the information provided, however "did not include the names of the patients or their addresses, because allegedly, this information should be handled after a disaster, because of an MOA (Memorandum of Agreement) to protect private information."¹⁷⁵⁵ Moreover, Minet maintained that "this is a huge contradiction with the logic of preparedness and anticipating tragedies and deaths, and like all protocols suggest, moving people that are dependent from electricity before a Category 5 hurricane hits."¹⁷⁵⁶

¹⁷⁴⁷ Ibid.

¹⁷⁴⁸ Cruz Soto Statement, at 4.

¹⁷⁴⁹ Rivera Statement, Attachment #4, at 3.

¹⁷⁵⁰ Yentel Statement, at 5.

¹⁷⁵¹ See e.g., Roy Testimony, *DC Briefing*, p. 96; Puerto Rico Recap.

¹⁷⁵² Carla Minet, testimony, *Puerto Rico Briefing*, p.115.

¹⁷⁵³ FEMA, Response to Affected Agency Review, May 16, 2022 [on file].

¹⁷⁵⁴ Minet Statement, at 1.

¹⁷⁵⁵ Ibid.

¹⁷⁵⁶ Ibid.

This recommendation may be outside of FEMA's scope since it applies to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rules¹⁷⁵⁷ and personally identifiable information (PII),¹⁷⁵⁸ falls outside of the control of FEMA and under the aegis of the HHS Secretary; and any changes to HIPAA rules would require Congressional action. Moreover, the Privacy Act of 1974¹⁷⁵⁹ also applies to FEMA. Since FEMA is a coordinating agency, however, these efforts could be organized with HHS regarding this recommendation which could help to save lives after a natural disaster.

Access for Transgender Individuals

Community advocates also raised concerns regarding FEMA's lack of policies about providing aid to transgender survivors.¹⁷⁶⁰ FEMA told the Commission that it did not collect specific information pertaining to transgender survivors after Hurricanes Harvey and María, therefore it could not determine if they were denied equitable resources and/or aid (e.g., access to shelters).¹⁷⁶¹ FEMA stated that it currently does not have a policy regarding the placement of transgender disaster survivors in single-sex shelters, because the agency does not operate or manage shelters.¹⁷⁶² FEMA also stated that disaster survivors are not required to apply or register for FEMA assistance to use sheltering services.¹⁷⁶³ FEMA informed the Commission, however, that name changes have posed challenges when verifying identification and other documents when providing aid.¹⁷⁶⁴ According to FEMA, when discrepancies arose in personal identification verification, the agency supported individuals in attempting to verify identity and ownership to provide aid.¹⁷⁶⁵

Following Hurricanes Harvey and María, FEMA investigated possible issues with identity verification challenges for disaster survivors. This involved name change challenges for transgender survivors when applying for FEMA assistance.¹⁷⁶⁶ Its analysis discovered that some individuals may have initially been denied IHP aid when their name and/or identification

¹⁷⁵⁷ HIPAA's privacy rules were created as a set of standards to ensure that patient privacy and health information are safeguarded. HIPAA's standards ensure that all covered entities (i.e., health plans, healthcare clearinghouses, and healthcare providers) treat personally identifiable information (PII) as protected health information (PHI). U.S. Dep't of Health and Human Services, "Summary of the HIPAA Privacy Rule," <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>.

¹⁷⁵⁸ The term "PII," as defined in OMB Memorandum M-07-1616 refers to information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

U.S. General Services Administration, "Rules and Policies – Protecting PII – Privacy Act," <https://www.gsa.gov/reference/gsa-privacy-program/rules-and-policies-protecting-pii-privacy-act>.

¹⁷⁵⁹ 5 U.S.C. § 552(a).

¹⁷⁶⁰ See, *supra* notes 1129-1130.

¹⁷⁶¹ FEMA Response to USCCR Interrogatories, pp. 19-21 [on file].

¹⁷⁶² *Ibid*, at 21.

¹⁷⁶³ *Ibid*.

¹⁷⁶⁴ *Ibid*, at 19-20.

¹⁷⁶⁵ *Ibid*, at 20.

¹⁷⁶⁶ *Ibid*.

documents did not match automated verification with public records.¹⁷⁶⁷ To address this challenge, FEMA changed its policy to be more inclusive to disaster survivors who have had a name change for a variety of reasons.¹⁷⁶⁸ For instance, in September 2018, FEMA implemented changes internally and published the updated policy language in the Individual Assistance Program and Policy Guide, FEMA Policy 104-009-03. Specifically, FEMA expanded the list of acceptable identity verification documents to include:

- Name change court order
- Marriage, civil union, or domestic partnership certificate
- Divorce or annulment decree
- Certificate of citizenship or naturalization
- Official document from a federally recognized Tribal government
- U.S. amended/corrected birth certificate.¹⁷⁶⁹

FEMA's failure to collect demographic data creates various opportunities for the agency's funds and resources to be discriminately and disproportionately administered and disbursed, especially at the local level.¹⁷⁷⁰ FEMA, however, is currently working with the Office of Management and Budget (OMB) and the Department of Homeland Security (DHS) to add demographic questions to the applications for assistance, which will provide the agency with more information to create a new rubric for more fair disbursement protocols.¹⁷⁷¹

A major challenge for FEMA is ensuring compliance and providing technical training to grantees and program staff regarding all civil rights matters.¹⁷⁷² Stakeholders, interagency officials, and disaster emergency experts maintain that FEMA should expand assistance to disaster survivors on how to access its programs and ensure that distribution of aid and resources are equitably administered to protected populations.¹⁷⁷³ This is essential due to FEMA's role as the lead agency for the federal government's response to disaster emergencies.

Access to Technology

Access to technology continues to pose a significant hurdle in accessing federal funds. According to a DHS' OIG report, FEMA did not provide adequate technological supports to

¹⁷⁶⁷ Ibid.

¹⁷⁶⁸ Ibid.

¹⁷⁶⁹ Ibid; *see also* FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, May 2021, https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

¹⁷⁷⁰ *See, e.g.*, Hersher and Benincasa, "How Federal Disaster Money Favors The Rich."

¹⁷⁷¹ FEMA Response to USCCR Interrogatories, pp. 19-20 [on file].

¹⁷⁷² FEMA, *FEMA Civil Rights Summits 2020: After Action Report*, Apr. 2021, https://www.fema.gov/sites/default/files/documents/fema_civil-rights-summits-2020-after-action-report.pdf

¹⁷⁷³ Ibid.

ensure that the disaster response and recovery efforts were equitable or effective following Harvey and María.¹⁷⁷⁴

In testimony to the Commission, experts suggested that following a natural disaster, the federal government could implement strategies to provide access to technology. For instance, Francisco Sánchez, Jr., President of the Emergency Management Association of Texas, explained that “the digital divide must be considered in FEMA processes.”¹⁷⁷⁵ At the Commission’s briefing in Puerto Rico, there was unanimous stakeholder agreement that there should be alternative mechanisms to submit disaster applications in addition to online options. For example, Ariadna Michelle Godreau Aubert suggested that in disaster impacted areas that lack telecommunications access, FEMA should adopt a paper application process.¹⁷⁷⁶ Stakeholders also commented that requiring disaster assistance forms to be completed online or over the phone when an island suffers from prolonged outages of internet service (and phone service) made it difficult for survivors to apply for assistance.¹⁷⁷⁷ Aubert explained:

Despite the major power outage that lasted for a year throughout the Island - and its impact in communications- FEMA insisted on having disaster applications filed through hotlines or internet platforms... This burdensome process could have been avoided if FEMA had adopted the necessary policies and protocols to adopt a paper application.¹⁷⁷⁸

Similarly, Tania Rosario-Méndez stated:

On an island where 30% of the population doesn’t have broadband access, and after the storm completely ravaged our telecommunications infrastructure, FEMA Assistance requests were required to be processed through online websites or apps - only available in English, oblivious to the fact that a vast majority of our population has limited proficiency in English.¹⁷⁷⁹

Rivera asserted that if FEMA is going to require the submission of online applications during a disaster, then survivors should have access to Disaster Recovery Centers (DRC) to allow for the filing of applications.¹⁷⁸⁰ The DRCs should also be open with longer hours to allow potential

¹⁷⁷⁴ Glenn Sklar, Principal Deputy Inspector General, Dep’t of Homeland Security Office of Inspector General. Written Statement for the Federal Response to Hurricanes María and Harvey: Civil Rights and Protections Following a Natural Disaster Briefing before the U.S. Comm’n on Civil Rights, Jun. 25, 2021, at 4.

¹⁷⁷⁵ Sánchez Statement, at 6.

¹⁷⁷⁶ Aubert Statement, at 8-9

¹⁷⁷⁷ Padilla-Ruiz Statement, at 2; Yentel Statement, at 7.

¹⁷⁷⁸ Aubert Statement, at 8-9.

¹⁷⁷⁹ Rosario-Méndez Statement, at 3.

¹⁷⁸⁰ Rivera Statement, at 5.

applicants to submit applications, check the status of their applications, and file appeals concerning their applications.¹⁷⁸¹

Education, Outreach & Technical Assistance

Another theme that arose from the Commission's investigation was the recommendation that FEMA should provide more education, outreach, and technical assistance related to the agency's recovery, mitigation, and preparedness assistance grant programs.¹⁷⁸² This need for additional outreach and assistance also extended to the National Flood Insurance Program (NFIP) and floodplain management programs.¹⁷⁸³

As discussed in previous chapters, language barriers continue to represent a major challenge for many disaster survivors.¹⁷⁸⁴ As this report has shown, language access was a significant challenge for some survivors after both hurricanes. Many survivors found the application process difficult to navigate and attested to FEMA's lack of preparedness when dealing with limited- or non-English speaking individuals. According to the President of the East End District in Texas, Veronica Gorzynski one of the primary lessons learned after Harvey was the need for "better outreach to either Spanish speaking or immigrant areas."¹⁷⁸⁵ Chauncia Willis, Co-Founder and CEO of the Institute for Diversity and Inclusion in Emergency Management (I-DIEM), explained that this lack of outreach is in part due to how FEMA operates. She testified to the Commission that:

FEMA does not make it mandatory or a requirement to take cultural competency training for its contractors, inspectors, or for anyone of their employees.¹⁷⁸⁶ And so they continue to enlist the services of partnerships that have not been trained with a focus on diversity, equity, and inclusion. Ultimately, this facilitates the cycle of disproportionate impact.¹⁷⁸⁷

Panelists from the Commission's Puerto Rico briefing pointed out that many official documents were provided only in English, staff and contractors were not fluent in Spanish, and there was a rapid turnover of staff. Executive Director of Fundación Fondo de Acceso a la Justicia, Amaris Torres Rivera recommended that for future disasters, federal agencies should "provide effective Spanish translation or [hire] local FEMA employees that speak Spanish that can explain the process to the applicant and answer any questions from the inspection process."¹⁷⁸⁸

¹⁷⁸¹ Ibid.

¹⁷⁸² FEMA, *Request for Information Summary Report*.

¹⁷⁸³ Ibid.

¹⁷⁸⁴ See, *supra* notes 829-830, 1114-1128.

¹⁷⁸⁵ Gorzynski Statement, at 1

¹⁷⁸⁶ Willis Testimony, *Texas Briefing*, p. 91

¹⁷⁸⁷ Ibid.

¹⁷⁸⁸ Rivera Statement, Attachment 4, at 2.

Similarly, Diane Yentel, President and CEO of the National Low Income Housing Coalition, recommended that if English is not the main language spoken by disaster survivors, then FEMA should provide the correct translation of all documents, forms, and materials needed to access FEMA resources. FEMA should also provide translators to survivors who do not speak English when conducting all housing inspections.¹⁷⁸⁹

Data Collection & Transparency

Many experts in disaster recovery and relief have asserted that the lack of transparency in data collection and sharing of information are problematic to FEMA's efforts to deliver assistance in a more equitable manner.¹⁷⁹⁰ Carla Minet, Executive Director, Centro de Periodismo Investigativo advocated that disaster recovery efforts should be clear and transparent.¹⁷⁹¹ Minet asserts that transparency should apply to all processes in which FEMA is involved. For instance, the agency needs to be transparent regarding the funding for Puerto Rico's electric grid to clearly show how the funds will be allocated.¹⁷⁹² Minet explained that "in Puerto Rico, we have a constitutional right of access to information... In my view and experience, the problems of getting information through FOIA are a real and constant obstacle to our accountability reporting regarding the recovery process."¹⁷⁹³

Similar sentiments were shared in FEMA's RFI report, where survey respondents stated their desire for FEMA to collect more information and share more data that will allow the agency and other federal and state agencies involved in disaster relief to target solutions to the most at-risk impacted disaster survivors.¹⁷⁹⁴ Additionally, RFI survey respondents emphasized the need to make these data accessible and transparent so community organizations, nonprofit organizations, and individuals can best address issues and problems that are directly impacting their communities.¹⁷⁹⁵

One critical area is the need for FEMA to collect and share racial and ethnic demographic data following a natural disaster,¹⁷⁹⁶ although as of the publication of this report, FEMA cannot collect specific demographic information on applicants applying for assistance.¹⁷⁹⁷ As previously discussed, in November 2020, FEMA's National Advisory Council recommended that the

¹⁷⁸⁹ Yentel Statement, at 5.

¹⁷⁹⁰ See, *supra* notes 1118, 1707.

¹⁷⁹¹ Minet Statement, at 3.

¹⁷⁹² *Ibid.*

¹⁷⁹³ *Ibid.*

¹⁷⁹⁴ FEMA, *Request for Information Summary Report*.

¹⁷⁹⁵ *Ibid.*

¹⁷⁹⁶ See e.g., Bibo Testimony, *DC Briefing*, p. 52; see, Hersher and Benincasa, "How Federal Disaster Money Favors The Rich."

¹⁷⁹⁷ FEMA, Response to Affected Agency Review, May 16, 2022 [on file].

agency address racial disparities in disaster relief.¹⁷⁹⁸ Scholars have asserted that while FEMA’s policies may not be intentionally designed to be discriminatory, in practice, the agency’s policies and programs have favored disaster survivors who own property, are wealthier, and are White.¹⁷⁹⁹

Currently, Diane Yentel, President and CEO, National Low Income Housing Coalition, asserts that “it is extremely difficult to access basic data about FEMA programs and processes.”¹⁸⁰⁰ Experts stated that FEMA needs to collect demographic and community-level data on disaster survivors and make that data easily accessible to the public to determine who is and is not benefitting from recovery and ensure that relief is equitable.¹⁸⁰¹

Furthermore, FEMA’s plan for how, when, and where to distribute aid should also be transparent. Ariadna Michelle Godreau Aubert, Executive Director, Ayuda Legal Puerto Rico asserts:

[C]oherent, participatory, and transparent planning is essential. Planning should be the basis of other critical decisions such as the integration of programs, the evaluation of housing plans on historically vulnerable communities, relocation plans, the need for temporary measures to protect survivors through rental assistance, and budget and compliance assessment.¹⁸⁰²

Aubert also recommended that grantees need to publish information that includes timelines and progress reports on the use of funds.¹⁸⁰³

Additionally, recommendations were made that FEMA change its application and appeals process to make it more clear, transparent, and easier to understand.¹⁸⁰⁴ For instance, Diane Yentel testified that:

FEMA has consistently refused to clarify or make public important information about its aid application process. By not releasing this information, FEMA makes it difficult, if not impossible, to determine who is eligible to receive assistance and why assistance is

¹⁷⁹⁸ FEMA, *National Advisory Council Report to the Administrator*.

¹⁷⁹⁹ See e.g., Martínez-Román Statement, Navarro Statement, at 5-6, 10; Madison Sloan, Director of Disaster Recovery and Fair Housing Project, Texas Appleseed and Chrishelle Palay, Executive Director, The HOME Coalition, Attachment A, p. 5; Willis Statement, at 3; Christopher Flavelle, “FEMA Says It’s Still Working to Fix Racial Disparities in Disaster Aid,” *New York Times*, Oct. 27, 2021, <https://www.nytimes.com/2021/10/27/climate/fema-aid-racial-disparities.html>.

¹⁸⁰⁰ Yentel Statement, at 8.

¹⁸⁰¹ Aubert Statement, at 17; Yentel Statement, at 8.

¹⁸⁰² Aubert Statement, at 17.

¹⁸⁰³ *Ibid.*

¹⁸⁰⁴ Yentel, Statement, at 7.

denied. A confusing appeals process leads to higher denial rates for low-income disaster survivors. In Puerto Rico, a lack of transparency and inadequate descriptions of the FEMA process, nonexistent or inadequate translations of FEMA documents, and prolonged outages of internet and phone service led to increased difficulty in applying for assistance. As a result, rumors and misinformation were widespread about what FEMA assistance was available and what survivors were required to do to receive help.¹⁸⁰⁵

Amaris Torres Rivera, Executive Director, Fundación Fondo de Acceso a la Justicia, stated that FEMA also needs to provide information and data to nongovernmental organizations (NGOs) since they depend on FEMA's information to effectively channel their services.¹⁸⁰⁶ Rivera also iterated that FEMA should maintain an updated digital platform with data on disaster recovery (e.g., the number of people that requested FEMA assistance, type of assistance, and municipality).¹⁸⁰⁷

Financial Oversight and Accountability

At the Commission's briefing, several stakeholders also mentioned the concern regarding financial oversight and financial accountability. For instance, Ariadna Aubert stated that "[w]e need accountability to ensure coherent planning, equitable access to funds, displacement minimization, and real and effective public participation throughout the entire process."¹⁸⁰⁸ Carla Minet also expressed that they want to have a centralized and updated system whereby the public can track the assignment of federal recovery funds. She told the Commission that:

[T]here are many hours that we invest to gather the information and track the recovery funds assigned by the federal government. The absence of a single, centralized, and updated place is just one of the main difficulties. The sources are dispersed and collect the data in different ways, even for the same periods of time, generating mistrust and confusion.¹⁸⁰⁹

In addition, Minet recommended that the Central Office of Recovery, Reconstruction, and Resiliency (COR3) include the names of the entities of the Government of Puerto Rico that received disaster recovery funds in their database so the information can be tracked. She wrote that "although COR3 shows the recovery funds allocated by 18 other federal agencies, it does not indicate which entities of the government of Puerto Rico have received them."¹⁸¹⁰

¹⁸⁰⁵ Ibid.

¹⁸⁰⁶ Rivera Statement, Attachment 4, at 3.

¹⁸⁰⁷ Ibid.

¹⁸⁰⁸ Aubert Statement, at 2.

¹⁸⁰⁹ Minet Statement, at 3.

¹⁸¹⁰ Ibid.

Another recommendation provided by stakeholders centered on the rebuilding of Puerto Rico's electric grid. For example, Ruth Santiago, Esquire of Comité Dialogo Ambiental, recommended the Commission look into the proposed use of FEMA funds for electric system work to ensure that they are invested in a cost-effective manner to provide accessible, affordable, renewable, reliable, and resilient electric energy.¹⁸¹¹ Additionally, Santiago expressed that the LUMA contract and the role of the FOMB [Financial Oversight and Management Board] in its imposition and in the electric crisis should also be examined.¹⁸¹² Specifically, Santiago called for the Commission "to investigate PREPA's Transmission and Distribution System Operation and Maintenance Agreement with LUMA Energy, LLC and the role of the Fiscal Oversight and Management Board in the imposition of the LUMA contract and the Puerto Rico electric crisis."¹⁸¹³

Going forward, Ariadna Michelle Godreau Aubert, Executive Director of Ayuda Legal Puerto Rico, asserted that there needs to be a committee that serves as a watchdog over the recovery process. She wrote "there needs to be an impartial facilitator that "serve[s] as watchdogs of the recovery process, and the need to produce periodic reports could be part of model guidelines."¹⁸¹⁴

Lastly, Aubert commented that FEMA should adopt best practices for contractors and make them available for the general public's consultation. FEMA should also assess contractors' compliance. She conveyed to the Committee:

Since Hurricane María made landfall in Puerto Rico, we have voiced concerns about the lack of accountability of contractors hired to manage the recovery program... [We have] reports from people who have never received a single notification on their cases, project managers being constantly replaced, of non-responsive officers, of people made to sign English-language and/or complicated contracts in 24 hours or less without having a chance to read them carefully or seek legal advice, are constant for applicants served by all of the companies contracted by the [Puerto Rico Department of Housing] PRDOH.¹⁸¹⁵

¹⁸¹¹ Santiago Statement, at 15.

¹⁸¹² *Ibid.*, at 2.

¹⁸¹³ *Ibid.*, at 15.

In May 2022, in the first federal case related to the government's efforts to restore Puerto Rico's electric power grid, a former FEMA official and the former president of Oklahoma-based energy company (Cobra Acquisitions) pled guilty to accepting and offering gratuities in violation of federal law. *See* Nicole Acevedo, "Ex-FEMA, energy company officials plead guilty in post-hurricane case in Puerto Rico," *NBC News*, May 19, 2022, <https://www.nbcnews.com/news/latino/ex-fema-energy-company-officials-plead-guilty-post-hurricane-case-puer-rca29502>.

¹⁸¹⁴ Aubert Statement, at 15.

¹⁸¹⁵ *Ibid.*

Rebuilding Recommendations

In the wake of a disaster, it can be challenging to think about what is needed in future years. Stakeholders in Puerto Rico asserted they do not want to rebuild infrastructures that have repeatedly been destroyed by hurricane forces.¹⁸¹⁶ For example, Ariadna Michelle Godreau Aubert commented that “FEMA, CDBG-DR, CDBG-MIT, and other recovery funding programs should never be a blind bet on possible outcomes but [have] a strategized road towards a long-term sustainable, just recovery.”¹⁸¹⁷ Additionally, Ruth Santiago, Esquire, Comité Dialogo Ambiental, recommended that FEMA funds should not be invested to rebuild the existing centralized, fossil-enabling energy grid.¹⁸¹⁸ She asserted that “using FEMA and HUD funds to rebuild the Puerto Rico grid would be a terrible waste of taxpayer money.”¹⁸¹⁹ Additionally, Santiago claims that:

Congress determined that rebuilding [the existing energy grid’s] lines over and over was not a cost-effective strategy [and that] electric power transmission and distribution lines in insular areas [including Puerto Rico] are inadequate to withstand damage caused by the hurricanes and typhoons.¹⁸²⁰

Santiago insisted that for long-term recovery, Puerto Rico should divest from using fossil-fired plants; and instead, invest in solar energy and battery systems. This shift could help low-income and minority areas that experience the brunt of pollution caused by existing power plants on the Island.¹⁸²¹

Pending Legislation

The Commission heard and collected testimony from government officials, disaster relief experts, community stakeholders, researchers and academics, and the public regarding many issues in the disaster recovery process.¹⁸²² In addition to these testimonials, as of the writing of this report, several bills are pending in Congress. In May 2020, Sen. Gary Peters (D-MI) introduced the Achieving Racial and Ethnic Equity in Disaster Response, Recovery, and Resilience Act of 2020 (S.3658).¹⁸²³ This seeks to establish the Office of Equal Rights and

¹⁸¹⁶ Santiago Statement, at 2.

¹⁸¹⁷ Aubert Statement, at 2.

¹⁸¹⁸ Santiago Statement, at 3.

¹⁸¹⁹ Ibid.

¹⁸²⁰ Ibid, at 2.

¹⁸²¹ Ibid.

¹⁸²² See generally, U.S. Commission on Civil Rights, “Civil Rights and Protections in the Federal Response to Hurricanes María and Harvey,” Jun. 25, 2021, <https://www.usccr.gov/meetings/2021/06-25-civil-rights-and-protections-federal-response-hurricanes-maria-and-harvey>; “Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas,” Oct. 21, 2021, <https://www.usccr.gov/meetings/2021/10-21-civil-rights-implications-disaster-relief-hurricane-harvey-texas>; “Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico,” Dec. 10, 2021, <https://www.usccr.gov/meetings/2021/12-10-civil-rights-implications-disaster-relief-hurricane-maria>.

¹⁸²³ S.3658 - Achieving Racial and Ethnic Equity in Disaster Response, Recovery, and Resilience Act of 2020, <https://www.congress.gov/bill/116th-congress/senate-bill/3658>.

Community Inclusion (OERCI) within FEMA, which would be responsible for improving disaster assistance access to the underserved and eliminating racial, ethnic, and other underserved community disparities in the delivery of preparedness, response, and recovery assistance. Underserved communities are defined as an historically disadvantaged community, including the Native American, African American, Asian, Hispanic, Pacific Islander, Middle Eastern and North African, rural, low-income, and disability communities.¹⁸²⁴ Additionally, the bill requires the development of measures to evaluate the effectiveness of the activities aimed at reducing disparities in services provided to underserved communities. The bill did not pass in the 116th Congress. A similar bill, the FEMA Equity Act, has been introduced by Sen. Elizabeth Warren (D-MA) to the 117th Congress, and has been referred to the Homeland Security and Governmental Affairs Committee.¹⁸²⁵

The Fairness in Federal Disaster Declarations Act of 2019 (S.1852) was introduced in June 2019 by Sen. Dick Durbin (D-IL). The bill requires FEMA to amend factors considered when evaluating a governor's request or a major disaster declaration.¹⁸²⁶ Sen. Durbin's office announced the bill as a way to make more equitable the disaster declaration process in small and rural communities in larger states.¹⁸²⁷ The press release indicated that while FEMA takes several factors into account when determining need, there is no standard for weighing the importance of each individual factor.¹⁸²⁸ The requirement proposed includes weighted valuations assigned to:

- estimated costs of assistance (10 percent)(currently the key component of FEMA's declaration process),
- localized impacts (40 percent),
- insurance coverage in force (10 percent),
- hazard mitigation (10 percent),
- recent multiple disasters (10 percent),
- programs of other federal assistance (10 percent),
- economic circumstances (10 percent).

Additionally, the economic circumstances of the local and state economy would be considered.¹⁸²⁹ For Individual Assistance, the formula breakdown would be:

¹⁸²⁴ Ibid.

¹⁸²⁵ S.4159 – FEMA Equity Act, <https://www.congress.gov/bill/117th-congress/senate-bill/4159/text>.

¹⁸²⁶ S.1852 - Fairness in Federal Disaster Declarations Act of 2019, <https://www.congress.gov/bill/116th-congress/senate-bill/1852/>

¹⁸²⁷ Dick Durbin, United States Senate, Illinois, "Durbin, Duckworth Work To Bring Fairness to FEMA Disaster Declaration Process," Jun. 13, 2019, <https://www.durbin.senate.gov/newsroom/press-releases/durbin-duckworth-work-to-bring-fairness-to-fema-disaster-declaration-process>.

¹⁸²⁸ Dick Durbin, United States Senate, Illinois, "Durbin, Duckworth Work To Bring Fairness to FEMA Disaster Declaration Process," Jun. 13, 2019, <https://www.durbin.senate.gov/newsroom/press-releases/durbin-duckworth-work-to-bring-fairness-to-fema-disaster-declaration-process>.

¹⁸²⁹ S.1852 - Fairness in Federal Disaster Declarations Act of 2019, <https://www.congress.gov/bill/116th-congress/senate-bill/1852/>

- concentration of damages (20 percent),
- trauma, (20 percent),
- special populations (20 percent),
- voluntary agency assistance (10 percent),
- insurance (20 percent),
- average amount of individual assistance by State (5 percent), and
- economic considerations (5 percent).¹⁸³⁰

These rules would be applicable to any disaster for which a governor requested a major disaster declaration and was denied on or after January 1, 2012.¹⁸³¹ The bill has been pending before the Committee on Homeland Security and Governmental Affairs since June 2019.

Three pending bills specifically address housing concerns for disaster survivors. In May 2021, Rep. Adriano Espaillat (D-NY-13) introduced the Housing Survivors of Major Disasters Act of 2021 (H.R.3037).¹⁸³² This would amend the Stafford Act to expand the types of documentation applicants for relief programs can use to prove occupancy or ownership of a damaged residence.¹⁸³³ Alternative forms of evidence include (but are not limited to) a utility bill, a pay stub, a current driver's license or state-issued identification card, a mortgage document, a real estate property tax receipt, medical records, or a charitable donation receipt.¹⁸³⁴ According to the Congressional Budget Office, insufficient documentation was the reason for approximately 77,000 rejected applications for Individual Assistance for María survivors.¹⁸³⁵ The bill would require FEMA to retroactively provide disaster assistance to households whose applications were denied assistance after January 1, 2017, due to insufficient documentation, and require the development of a self-certification statement and necessary guidance to implement the bill.¹⁸³⁶ The Housing Survivors of Major Disasters Act also requires FEMA to work with HUD to consult about Disaster Housing Assistance Program (DHAP) activation in the event of future presidential disaster declarations. Several panelists providing testimony before the Commission

¹⁸³⁰ Ibid.

¹⁸³¹ Ibid.

¹⁸³² H.R.3037 – Housing Survivors of Major Disasters Act of 2021, <https://www.congress.gov/bill/117th-congress/house-bill/3037>.

¹⁸³³ Congressional Budget Office, H.R. 3037, Housing Survivors of Major Disasters Act of 2021, <https://www.cbo.gov/system/files/2021-10/hr3037.pdf>

¹⁸³⁴ H.R.3037 – Housing Survivors of Major Disasters Act of 2021, <https://www.congress.gov/bill/117th-congress/house-bill/3037>.

¹⁸³⁵ Congressional Budget Office, H.R. 3037, Housing Survivors of Major Disasters Act of 2021, <https://www.cbo.gov/system/files/2021-10/hr3037.pdf>

¹⁸³⁶ Ibid.

strongly support the Act.¹⁸³⁷ The bill was ordered to be reported by voice vote by the Committee on Transportation and Infrastructure on July 28, 2021.¹⁸³⁸

The second bill is the Reforming Disaster Recovery Act (S.2471), introduced by Sen. Brian Schatz (D-HI) in July 2021.¹⁸³⁹ This bipartisan legislation aims to strengthen HUD's disaster recovery grants and establish an office within HUD that would be devoted to disaster recovery and resilient communities, thus improving coordination at the federal level. This would create a disaster recovery fund to allow HUD to assist communities without waiting for Congress to act following a natural disaster and would authorize HUD to issue regulations to codify requirements and reduce delays and unpredictability stemming from the current Federal Register notice process. As Sen. Schatz explained:

Right now, the law mandates that communities in crisis wait for Congress to pass a disaster funding bill before they can even apply for help from HUD. This bill changes the law so they no longer have to wait. As soon as a disaster strikes, HUD can help communities begin the process of recovery.¹⁸⁴⁰

Senator Todd Young (R-IN) stated that the “legislation would streamline, reform, and inject greater fiscal responsibility into the broken CDBG Disaster Recovery Program.”¹⁸⁴¹ The bill was referred to the Committee on Banking, Housing, and Urban Affairs on December 15, 2021.¹⁸⁴² Sponsors of the bill claim that its passage would help to reduce waste, fraud, and abuse while improving effectiveness, equity, and recovery in the CDBG-DR program. Furthermore, this bill would make the program permanent, rather than subject to presidential disaster declarations and congressional authorization on a disaster-by-disaster basis, which would solve longstanding problems of delayed implementation and the potential for widespread fraud.¹⁸⁴³ Critics of this bill argue that making the program permanent would increase duplication of benefits, increase bureaucracy, give the federal government more control and authority over state responsibilities, and increase waste, fraud, and abuse.¹⁸⁴⁴

¹⁸³⁷ Martínez-Román Statement, at 6; Yentel Statement, at 11-12.

¹⁸³⁸ H.R.3037 – Housing Survivors of Major Disasters Act of 2021, <https://www.congress.gov/bill/117th-congress/house-bill/3037>.

¹⁸³⁹ S.2471 – Reforming Disaster Recovery Act of 2021, <https://www.congress.gov/bill/117th-congress/senate-bill/2471>.

¹⁸⁴⁰ Brian Schatz, U.S. Senate, Hawaii, “Schatz, Collins, Young, Leahy, Cassidy Introduce Bipartisan Legislation To Reform Disaster Recovery,” Jul. 22, 2021, <https://www.schatz.senate.gov/news/press-releases/schatz-collins-young-leahy-cassidy-introduce-bipartisan-legislation-to-reform-disaster-recovery>.

¹⁸⁴¹ Ibid.

¹⁸⁴² S.2471 – Reforming Disaster Recovery Act of 2021, <https://www.congress.gov/bill/117th-congress/senate-bill/2471>.

¹⁸⁴³ Ryan Lanier, “The Pitfalls of the Reforming Disaster Recovery Act,” Citizen Against Government Waste, <https://www.cagw.org/thewastewatcher/pitfalls-reforming-disaster-recovery-act>.

¹⁸⁴⁴ Ibid.

Additionally, in October 2021, Rep. Tom Rice (R-SC-7) introduced the FEMA Relief Extension Act (H.R.5668).¹⁸⁴⁵ This legislation proposes to amend the Stafford Act, as well as any corresponding regulation, to extend federal housing assistance to individuals and households from 18 months to 24-months.¹⁸⁴⁶ Rep. Rice indicated that the act will “give folks who utilize FEMA assistance after a disaster or emergency more flexibility. This legislation adjusts a pressing FEMA deadline to give Americans peace of mind and extra time while recovering.”¹⁸⁴⁷ The bill was referred to the Subcommittee on Economic Development, Public Buildings, and Emergency Management on October 22, 2021.¹⁸⁴⁸

Several additional pieces of legislation regarding disaster relief are pending. In December 2020, Rep. Jesus Garcia (D-IL-4) introduced the Community Driven Recovery for Puerto Rico Act (H.R.8978).¹⁸⁴⁹ The bill aims to strengthen transparency and local oversight of recovery efforts and facilitates local participation in contracting and decision making.¹⁸⁵⁰ It appoints a representative from the Civil Society Task Force within each recovery agency, including FEMA, HUD, the Puerto Rican COR3, and the Puerto Rico Housing Department, to oversee agency work and promote equity and inclusion.¹⁸⁵¹ The bill was referred to the Subcommittee on Economic Development, Public Buildings, and Emergency Management on December 17, 2020.

In February 2021, Sen. Edward Markey (D-MA) introduced the FEMA Climate Change Preparedness Act (S.280)¹⁸⁵² which would require FEMA to revise its 2018-2022 Strategic Plan to ensure explicit mention of climate change, and address the implications of climate change, and ensure that future strategic plans do the same. Sen. Markey has indicated that climate change

has fueled a devastating rise in extreme weather disasters, making FEMA’s job of protecting Americans more critical and more challenging than ever before. For FEMA to fulfill its important duty in a new and uncertain world, climate must be at the forefront of the agency’s planning and mission. All relevant agency policies, plans, programs,

¹⁸⁴⁵ H.R.5668 – FEMA Relief Extension Act, <https://www.congress.gov/bill/117th-congress/house-bill/5668>.

¹⁸⁴⁶ U.S. Congressman Tom Rice, South Carolina, “Representatives Rice and Fletcher Introduce the FEMA Relief Extension Act,” Oct. 21, 2021, <https://rice.house.gov/press-releases?ID=C142F15D-30A8-469A-A932-3B6A6B606513>.

¹⁸⁴⁷ Ibid.

¹⁸⁴⁸ H.R.5668 – FEMA Relief Extension Act, <https://www.congress.gov/bill/117th-congress/house-bill/5668>.

¹⁸⁴⁹ H.R.8978 – Community Driven Recovery for Puerto Rico Act, <https://www.congress.gov/bill/116th-congress/house-bill/8978>.

¹⁸⁵⁰ Jesus G. Garcia, U.S. Congress, Illinois 4th District, “Reps. Garcia, Espaillat, and Velazquez Introduce Bill to Create Local Accountability in the Puerto Rican Recovery,” Dec. 17, 2020, <https://chuygarcia.house.gov/media/press-releases/ reps-garc-espallat-and-vel-zquez-introduce-bill-create-local-accountability>.

¹⁸⁵¹ Ibid.

¹⁸⁵² S.280 - FEMA Climate Change Preparedness Act, <https://www.congress.gov/bill/117th-congress/senate-bill/280>.

strategies, and operations must incorporate and center climate change, and this legislation will ensure that our national lifeline against natural disasters stays in top condition.¹⁸⁵³

The bill was referred to the Committee on Homeland Security and Governmental Affairs on February 8, 2021.

In March 2021, Resident Commissioner Jennifer González-Colón (R-PR-At Large) introduced the Federal Disaster Assistance Coordination Act.¹⁸⁵⁴ This bill extends the deadline by which FEMA must complete certain activities required under the Disaster Recovery Reform Act. Specifically, the deadline is extended for two years for FEMA to (1) conduct a study and develop a plan under which the collection of information from disaster assistance applicants and grantees will be made less burdensome, duplicative, and time consuming for applicants and grantees; and (2) develop a plan for the regular collection and reporting of information on federal disaster assistance awarded.¹⁸⁵⁵ The bill also would require FEMA to convene a working group with other federal agencies to improve the preliminary damage assessment process following disasters. Specifically, the bill would direct the working group to identify potential areas of duplication, determine the feasibility of having one federal agency make damage assessments for all agencies, and identify new areas for the use of technology. The bill was referred to the Committee on Homeland Security and Governmental Affairs on June 16, 2021.

Recommended Best Practices

Several recommendations were offered following several Commission briefings, receiving public comments, and the DHS listening sessions. The following items represent initial recommendations that could guide FEMA to provide aid in a more equitable manner following a disaster:

- FEMA should develop a preparedness plan for all SLTT partners that considers the logistical and economic challenges faced when evacuating Puerto Rico to the mainland. The plan should include strategies to support the return of evacuees to Puerto Rico once it is safe to do so.¹⁸⁵⁶

¹⁸⁵³ Ed Markey, U.S. Senate, Massachusetts, “Senator Markey, Rep. Clarke Reintroduce Legislation to Put Climate Change Resiliency At Center of FEMA Emergency Response Duties,” Feb. 3, 2021, <https://www.markey.senate.gov/news/press-releases/senator-markey-rep-clarke-reintroduce-legislation-to-put-climate-change-resiliency-at-center-of-fema-emergency-response-duties>.

¹⁸⁵⁴ H.R.2016 - Federal Disaster Assistance Coordination Act, <https://www.congress.gov/bill/117th-congress/senate-bill/280>. <https://www.congress.gov/bill/117th-congress/house-bill/2016>.

¹⁸⁵⁵ Ibid.

¹⁸⁵⁶ Navarro Statement, at 20.

- FEMA should assess the IHP eligibility process to ensure that all disaster survivors have equal access to IHP assistance programs and should work in conjunction with the SBA to simplify and streamline the application process.¹⁸⁵⁷
- FEMA should partner with more local organizations to avoid a bottleneck of federal funds and train staff about the cultural contexts of disaster areas.¹⁸⁵⁸
- FEMA should increase collaboration with other community organizations and governmental bodies¹⁸⁵⁹ to include local counties and nonprofit organizations for resource sharing across communities to combat post-disaster shortages.¹⁸⁶⁰ This type of public engagement with stakeholders should begin with emergency planning and response and continue through the closeout of recovery and mitigation programs.¹⁸⁶¹ Additionally, decentralizing recovery funds may help ensure a more expeditious, equitable, and just recovery.¹⁸⁶²
- FEMA should automatically waive matching and reimbursement requirements for programs deployed in economically distressed regions.¹⁸⁶³
- FEMA should start utilizing disaster registries,¹⁸⁶⁴ and the Needs Assessment should be used as the main point of entry to the entire disaster recovery apparatus: sharing data across agencies to ensure survivors do not get left behind.¹⁸⁶⁵ Rather than creating and implementing numerous categories of ineligibility, disaster assistance programs should employ broad-based categories of eligibility, with the aim that every survivor receives the recovery assistance to which they are entitled.¹⁸⁶⁶
 - Similarly, a single aid portal that automatically initiates consideration for all available aid from federal organizations would make the application experience less stressful, and less repetitive, for users.¹⁸⁶⁷
- FEMA should hire and train a sufficient number of staff fluent in the languages spoken in the disaster areas across all levels of the agency and ensure information and applications for all individual and public assistance programs are available in needed languages and can be submitted in such languages.¹⁸⁶⁸

¹⁸⁵⁷ Currie Statement, at 2; Hirsch Statement, at 2.

¹⁸⁵⁸ Gorczynski Statement, at 3; Navarro Statement, at 20.

¹⁸⁵⁹ Houston Recap, Puerto Rico Recap.

¹⁸⁶⁰ Padilla-Ruiz Statement, at 6.

¹⁸⁶¹ Yentel Statement, at 10.

¹⁸⁶² Miranda Statement, at 4; Navarro Statement, at 21.

¹⁸⁶³ Navarro Statement, at 20.

¹⁸⁶⁴ Houston Recap, at 4; Puerto Rico Recap, at 5. Note: “FEMA does not maintain nor use registries, as registries are typically maintained at the local level.” See Dep’t of Homeland Security, Response to USCCR Affected Agency Review (May 25, 2022) [on file].

¹⁸⁶⁵ Orduña Statement, at 1.

¹⁸⁶⁶ Yentel Statement, at 12.

¹⁸⁶⁷ Sánchez Statement, at 3.

¹⁸⁶⁸ Navarro Statement, at 19.

- FEMA should provide disability training to all of its shelter personnel, including registration, medical, and security workers.¹⁸⁶⁹
- FEMA can improve communication accessibility by including American Sign Language (ASL) translations in all its videos, and by working with government and media organizations to ensure that any broadcast containing disaster information includes ASL translations.¹⁸⁷⁰
- Congress should enact clarifying legislation to ensure that people experiencing homelessness prior to the disaster have access to the same emergency shelter and disaster relief assistance as other survivors, including rental assistance.¹⁸⁷¹
- When hiring contractors, start by looking local: by relying on out-of-town contractors, state and local governments miss an opportunity to provide employment, job training, and contracting opportunities to low-income local workers and small- and minority-controlled businesses, which often are in severe need of work because of disasters' disruption to local business.¹⁸⁷²
- FEMA should collect and make public data on race, gender, disability, age, and other demographic information for relief recipients to develop a complete profile of who benefits from recovery.¹⁸⁷³
- Data transparency should be improved to allow greater public participation in disaster recovery efforts and help public and private entities better recognize gaps in services and identify reforms needed for future disaster recovery efforts.¹⁸⁷⁴
- Congress should permanently authorize DHAP and automatically activate it after every major disaster to provide longer-term housing assistance and wrap-around services to low-income survivors.¹⁸⁷⁵
- Long-term housing recovery programs should first prioritize the housing needs of people with the lowest incomes, including those individuals who have been displaced or involuntarily institutionalized.¹⁸⁷⁶
- Consolidating all disaster housing programs into HUD would streamline efforts, simplify the process, and result in better outcomes for survivors.¹⁸⁷⁷
- Communicate to the Central Government the advisory maps are only advisory.¹⁸⁷⁸ Given the impact flood maps have on eligibility, there should be a standard process created for

¹⁸⁶⁹ Houston Recap, at 8

¹⁸⁷⁰ Houston Recap, at 2

¹⁸⁷¹ Yentel Statement, at 13.

¹⁸⁷² *Ibid*, at 11; *see also* Navarro Statement, at 20.

¹⁸⁷³ Aubert Statement, at 16-17; Navarro Statement at 14; Bonilla Statement, at 1; Jennifer Hinojosa, Director of Research, Center for Puerto Rican Studies, CUNY Hunter College, *Puerto Rico Briefing Public Session*, pp. 235-236.

¹⁸⁷⁴ Yentel Statement, at 10; Rivera Statement, at 5; Navarro Statement, at 21; Martínez-Román Statement, at 11.

¹⁸⁷⁵ Yentel Statement, at 11.

¹⁸⁷⁶ Yentel Statement, at 22; Navarro Statement, at 20.

¹⁸⁷⁷ Yentel Statement, at 22.

¹⁸⁷⁸ Miranda Statement, at 5.

impacted residents to question and appeal flood zone designations, as well as technical assistance and orientation for communities.¹⁸⁷⁹ While prohibiting rebuilding in flood-prone areas would leave thousands of low-income families in insecure dwellings or forcibly displaced, other measures such as new construction moratoriums on coastal and flood zones could be a measure of adaptation and mitigation sensible to housing needs and climate change.¹⁸⁸⁰

- Following the changes FEMA made to its occupancy verification standards in September 2021, Puerto Rico disaster survivors previously denied assistance should be provided the opportunity to reopen their cases.¹⁸⁸¹
- In Puerto Rico, FEMA should coordinate a task force, composed of representatives of the government, as well as the non-profit sector, to discuss recommendations on how to streamline processes at COR3, specifically related to performance, compliance, and payment and reimbursement processes, to ensure that these are faster.¹⁸⁸² FEMA has indicated that it should coordinate with SLTT partners to integrate such a task force, as equity should be applied to all stakeholders across storms.¹⁸⁸³

¹⁸⁷⁹ Navarro Statement, at 16.

¹⁸⁸⁰ Aubert Statement, at 13.

¹⁸⁸¹ Yentel Statement, at 7.

¹⁸⁸² Miranda Statement, at 4.

¹⁸⁸³ FEMA, Response to Affected Agency Review, May 16, 2022 [on file].

Statement of Commissioner Debo. P Adegbile

When major natural disasters occur that require a federal response, there is an expectation that the federal government will come to the aid of those affected. When disaster strikes there is also the expectation that federal assistance will be prompt and ameliorate suffering. As with all government services, we expect that the assistance will be provided in an equitable and fair manner, including that the aid will be distributed to affected people fairly. Federal law requires it. The outcomes and choices federal, state, and local governments make in disaster responses are increasingly important as we face climate change which increases the likelihood of natural disasters and the shelter and health concerns that flow from them. Natural disasters are often thought of as “leveling agents” that affect all individuals equally; however, research and our study and report show that they can exacerbate existing disparities and have more lasting impacts on communities that were disadvantaged prior to the disaster.

To better understand FEMA’s responsibilities in disaster response and recovery, we must consider its mandate, and the statutes that govern it. FEMA’s essential mission is to “help[] people before, during, and after disasters.”¹⁸⁸⁴ The agency does this by coordinating on-the-ground support to state and local emergency response teams when disasters strike. Under the Stafford Act, the federal government is charged with ensuring all relief and assistance “... shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.”¹⁸⁸⁵ The Act establishes the statutory authority for most federal disaster responses, particularly those pertaining to FEMA.¹⁸⁸⁶

Our report detailed, however, aid to Harvey and María survivors following each hurricane may not have sufficiently accomplished FEMA’s mission and may have run afoul of the agency’s mandate under the Stafford Act. To be sure there were many practical challenges that adversely impacted FEMA’s response to deliver aid after both hurricanes. In his written statement to the Commission, Glenn Sklar, Principal Deputy Inspector General at the Department of Homeland Security explained that:

María severely damaged Puerto Rico’s transportation, electrical, and communication infrastructures. Damage to these critical infrastructures left Puerto Rico’s entire population of 3.7 million without electricity and 95 percent of cell towers out of service. All the island’s residents were disaster survivors who had to rely on FEMA’s response efforts for basic commodities, such as food and water, for extended time periods.

¹⁸⁸⁴ <https://www.fema.gov/about-agency>

¹⁸⁸⁵ 42 U.S.C. 5151 § 308 (1988)

¹⁸⁸⁶ <https://www.fema.gov/media-library/assets/documents/15271>

Similarly, David Bibo, FEMA’s Acting Associate Administrator for FEMA’s Office of Response and Recovery testified to the extent of the damage in Puerto Rico following Hurricane María stating that “every airport and port were closed. Only 5 percent of the population had access to cell phone service and 3.7 million residents were without electricity.”¹⁸⁸⁷

Hurricane Harvey in Texas also caused widespread damage that affected thousands of residents. Sklar explained:

Harvey made landfall in Texas as a Category 4 hurricane that caused catastrophic flooding and widespread destruction along Texas’ Gulf Coast. In some locations, storm-related rainfall exceeded 50 inches with top wind speeds in excess of 130 miles per hour. For example, Hurricane Harvey dropped more than 60 inches of rain east of Houston, forcing 780,000 residents from their homes.¹⁸⁸⁸

Our report asks whether the federal government’s response resulted in civil rights failures that compounded the devastating effects of the hurricanes?

The Commission’s investigation found that the disaster relief and response efforts to the storms differed on many fronts. For instance, from landfall through six months after, the disaster response to Harvey in Texas was on a larger scale and faster than the response to María in Puerto Rico. Funding for survivors also differed. Nine days after each of the respective storms, FEMA approved \$141.8 million for individual assistance to Harvey victims, however, approved \$6.2 million for victims of María. Survivors of Harvey received \$1.28 billion in aid within two months after landfall, while María survivors waited four months before receiving \$1 billion in aid. These delays in assistance are significant because any delay can drastically affect survivors’ lives and ability to recover.

Even as our plane landed in Puerto Rico, I was struck by the patchwork of blue tarp roofs even five years after the hurricane. Further, the differences in these initial responses were not because Harvey was a more powerful storm. Charley Willison, PhD, MPH, MA, explained that “when considering the mortality rates as a measure of need or severity from the disasters, the mortality rates resulting from Hurricane María were more than 30 times greater than that of Harvey []. If disaster responses vary in their effectiveness across communities, health equity is affected.”¹⁸⁸⁹

While FEMA’s initial response to the hurricanes differed, the Commission’s investigation found that survivors of the hurricanes shared many of the same challenges. One of the most frequent issues that arose during the investigation involved the overly complicated and complex

¹⁸⁸⁷ David Bibo, Acting Associate Administrator, FEMA Office of Response and Recovery, testimony, *DC Briefing*, p. 15.

¹⁸⁸⁸ Sklar Statement, at p 2.

¹⁸⁸⁹ Charlie E. Willison PhD, MPH, MA, testimony, *DC Briefing* p. 99

application (and subsequent) appeals process to receive FEMA funds. Survivors after a disaster need to have a process that is clear and easy to navigate to avoid confusion; however, the Commission found that FEMA applications often consisted of multiple steps, were highly technical, time-consuming, and often resulted in denial of aid even for eligible applicants.

Among other issues in the application process our report found:

- ❖ A substantive amount of aid applications in Puerto Rico were denied due to issues in providing proof of home ownership, despite nothing in the territory's laws or regulations requiring homeowners to register their properties. Following the work of many community advocates, in September 2021, FEMA adapted its policies to make it easier for disaster survivors to prove ownership. However, FEMA did not notify survivors of this policy shift and inform them that they could reapply or appeal their previous denial. As of the writing of this report, the agency has taken no action to compensate the thousands of Puerto Ricans who were denied relief. Therefore, FEMA should notify these survivors of these changes and allow them to reopen their cases.
- ❖ Individuals living in rural areas were often far from Disaster Recovery Centers, and with no public transportation available many were unable to make it to a location and begin to request aid.
- ❖ The Commission received testimony that “countless families denied due to clerical errors.” Additionally, a denied applicant must submit a form explaining their dispute and provide supporting documentation, but FEMA denial letters provide vague reasons for the initial denial of assistance, making determining what documentation to submit with the appeal particularly challenging.
- ❖ A panelist described that a standard FEMA denial letter often does not indicate why the damage to the house doesn't qualify for aid. The letters often do not include facts about what the inspector viewed or deemed to be disaster-related damage, leaving applicants unsure as to what made them ineligible. This lack of clarity makes it more difficult for legal aid organizations to inform and assist low-income survivors after a disaster, resulting in appeals taking longer and being more costly, or for many survivors to give up on appealing at all.
- ❖ The aid application process was further complicated by the lack of electricity and internet access. This was especially true in Puerto Rico, where rolling power outages affect significant portions of the Island over four years later.
- ❖ After María, many survivors lacked telephone and/or internet access or had evacuated the Island which made it difficult to schedule or follow through with the required property

inspections to get assistance. For residents who were able to meet with inspectors, many reported that FEMA inspectors were not bilingual and did not speak Spanish and so could not conduct a thorough inspection, and thus residents' claims were denied.

Survivors of both storms faced language access obstacles. For example, after Harvey, there were many instances of information about shelter locations that were provided only in English. In Puerto Rico, FEMA did not have enough Spanish-speaking employees to accommodate the Island, leading to delays in aid and assistance. Moreover, even after documents had been translated into Spanish, they were often inaccurate and confusing. Additionally, sign linguists sent to Puerto Rico often only knew English American Sign Language (ASL), rather than the Spanish variant used generally through the Island.

Other language access issues included:

- ❖ During public forums, FEMA officials admitted they were not properly prepared and lacked the staffing capacity and Spanish-speaking staff necessary to properly support displaced families as they arrived on the mainland and transitioned into the community.
- ❖ Witnesses and panelists consistently testified that Spanish-speaking Puerto Ricans received disproportionately lower amounts of assistance for María recovery than English-speaking mainland Americans received. Given that Puerto Rico's residents are almost entirely Latinx, the territory's official languages include Spanish, and many Puerto Ricans speak limited English, testimony shows that FEMA's lower levels of assistance to María survivors failed to comply with the principles underlying Title VI and 44 CFR § 7.5, which prohibits disparate treatment based on race, national origin, and linguistic characteristics in clear violation of federal court precedent and EEOC Guidance.
- ❖ FEMA should hire and train enough staff fluent in the languages spoken in the disaster areas and ensure information and applications for all assistance programs are available in needed languages and can be submitted in such languages.
- ❖ FEMA can improve communication accessibility by including ASL translations in all its videos, and work with government and media organizations to ensure that all broadcasts containing disaster information include ASL translations.

Another issue documented in our report was how the federal response inadequately aided people with disabilities during the natural disaster response. Andres Gallegos, Chairman of the National Council of Disabilities testified that “both in Puerto Rico and Houston, FEMA failed people with disabilities, with deadly consequences. People with disabilities were not included in emergency

planning and were excluded from accessing much of the disaster relief provided in their aftermath.”¹⁸⁹⁰

Some examples include:

- ❖ During Harvey, researchers found that neighborhoods with higher proportions of residents with disabilities were more likely to experience Harvey-induced flooding, and several assisted living facilities were flooded. The Commission received testimony indicating that the Texas Department of Emergency Management did not allocate staff to target disability-related issues during Harvey. Additionally, the Commission received a public comment from a disability rights attorney stating that FEMA had denied individuals with disabilities meaningful access to FEMA programs through an absence of public-facing reasonable accommodations, as well as knowledgeable staff to assist in navigating an accommodation process.
- ❖ Another issue that arose for people with disabilities involved the use of institutional settings. The National Council on Independent Living reported that during recovery efforts post-disaster there is a “trend of persons with disabilities who had lived in the community being transferred to institutional settings, either due to lack of post-shelter housing options or because of the difficulties of navigating disaster recovery.”¹⁸⁹¹
- ❖ In the aftermath of Harvey, even when individuals with disabilities could access shelters, that did not necessarily mean they could access accommodations.
- ❖ FEMA should provide disability training to all of its shelter personnel, including registration, medical, and security workers. FEMA needs to work with state and local partners to find and locate persons with disabilities who will have trouble evacuating to shelters. It should also ensure that such shelters have electricity for electric-dependent persons (i.e., those who rely on ventilators and like medical equipment, but also those with the need for refrigeration, such as people with diabetes).
- ❖ When evaluating the habitability of a home for aid purposes, FEMA’s process assumes that all applicants can live in the same type of environment without risk or injury. FEMA should adapt its habitability standards to consider those with disabilities and underlying health conditions.

¹⁸⁹⁰ Andres Gallegos, Chairman, Nat’l Council on Disability, testimony, *DC Briefing*, p. #.87.

¹⁸⁹¹ National Council on Disability, *Preserving Our Freedom: Ending Institutionalization of People with Disabilities During and After Disasters*, May 24, 2019, p. 10, <https://ncd.gov/publications/2019/preserving-our-freedom>.

While these are only a few examples of the many challenges survivors faced post-hurricanes, it also is difficult to assess if the response was equitable and if FEMA's various equity programs are being implemented successfully due to the lack of data. Multiple panelists at the Commission's briefings testified that collecting better data, and making that data publicly available, is a key factor for the government to evaluate these programs and make sound conclusions about needed reforms. Therefore, FEMA should collect and make public data on race, gender, disability, age, and other demographic information for relief recipients to develop a complete profile of who benefits from recovery. Our report highlights that FEMA's failure to collect demographic data creates various opportunities for the agency's funds and resources to be discriminately and disproportionately administered and disbursed, especially at the local level.

The disaster relief and recovery process is a multipronged effort that includes at least 29 federal agencies, including FEMA, that provide disaster aid to individual citizens and also to states, territories, Indian Tribes, and other local governments. Our report found that they all faced many challenges meeting their mission requirements. Some of those challenges can be explained by the catastrophic nature of the hurricanes and the multiple concurrent nationwide disasters that also occurred in 2017; however as stated above, some of the barriers to aid and accessibility are the direct result of the lack of preparedness, staffing issues, data tracking failures, lack of transparency of the aid application process, language access issues, and the lack of collaboration with non-governmental organizations and community partners familiar with the state of play on the ground.

Effective intervention from the federal government can mean the difference between life and death for some disaster survivors. Multifaceted responses are necessary and overdue. There are tangible steps the federal government can take to improve disaster response for protected classes who are most at risk of adverse health and economic consequences during and after disasters. The purpose of this report was not to unduly criticize FEMA's natural disaster efforts always arising in difficult circumstances; rather, it is meant as an examination about the barriers and challenges the agency and its partners faced when providing much-needed aid to survivors. Recognizing these issues and risks are the first steps to being able to address barriers that will better position the agency to fulfill its mission. Moreover, addressing the challenges in planning and delivering aid now, will better situate the federal government to prepare for future disasters and reduce the risk of exacerbating inequities in the disaster response process.

Statement of Commissioner David Kladney

A Tale of Two Hurricanes

By Commissioner David Kladney

"The response and recovery effort probably has never been seen for something like this ... [t]his is an island surrounded by water, big water, ocean water."¹⁸⁹²

This was President Trump's rationale for FEMA's slow response to Puerto Rico's Hurricane Maria disaster in 2017. Trump repeatedly asked Congress to halt reconstruction aid to Puerto Rico, telling GOP members of Congress that Puerto Rico had received "too much money," all the while refusing to acknowledge the devastation caused by the United States' deadliest natural disaster in more than a century.¹⁸⁹³

More than three Thousand people died in the aftermath of Hurricane Maria. I use "aftermath" because only a fraction of these deaths are attributable to the hurricane itself, with the other deaths coming in the weeks and months following because of inadequate response.¹⁸⁹⁴ There was no power for refrigeration or medical devices, no communication, no clean water, and roads were impassable.¹⁸⁹⁵ Blackouts continued to disrupt life more than four years later.¹⁸⁹⁶

For comparison, despite impacting almost 10 million more people, Hurricane Harvey's death toll was 103 – with the majority – 68 of those deaths being directly attributable to the hurricane.¹⁸⁹⁷ After 10 days, power was 75% restored in Houston.¹⁸⁹⁸ After another week, it was fully restored.¹⁸⁹⁹

¹⁸⁹² Jordan Faiban, *Trump says Puerto Rico relief hamped by 'big water, ocean water,'* The Hill, <https://thehill.com/homenews/administration/353094-trump-says-puerto-rico-relief-hampered-by-big-water-ocean-water> (Sept 29, 2017).

¹⁸⁹³ See Nicole Acevedo, *Trump Administration Doubles Down on Opposition to Puerto Rico Funding, Drawing Criticism*, <https://www.nbcnews.com/news/latino/trump-administration-doubles-down-opposition-puerto-rico-funding-drawing-criticism-n988181> (Mar. 27, 2019).

¹⁸⁹⁴ See Testimony of Carmen Yulin Cruz Soto, Dec. 10, 2021 Puerto Rico Briefing Tr. at 24.

¹⁸⁹⁵ See Oliver Millman, *Six Weeks After Hurricane Maria, Puerto Ricans Still Waiting on Help From FEMA*, The Guardian, <https://www.theguardian.com/world/2017/nov/09/six-weeks-after-hurricane-maria-puerto-ricans-still-waiting-for-help-from-fema> (Nov. 9, 2017); see also AFP, *Hurricane Maria Likely led to the Deaths of more than 4,600 People, Researchers say*, <https://www.cbsnews.com/news/hurricane-maria-death-toll-puerto-rico-researchers/> (May 29, 2018).

¹⁸⁹⁶ See Mazzei Patricia, "Why Don't We Have Electricity?" Outages Plague Puerto Rico The New York Times, <https://www.nytimes.com/2021/10/19/us/puerto-rico-electricity-protest.html> (Nov. 10, 2021).

¹⁸⁹⁷ Chris Huber, 2017 Hurricane Harvey: Facts, TAQs, and how to help, World Vision, <https://www.worldvision.org/disaster-relief-news-stories/2017-hurricane-harvey-facts> (updated Sept. 7, 2018).

¹⁸⁹⁸ See Tom McCarthy, *Experts say it could take Houston years to fully recover from Harvey*, The Guardian, <https://www.theguardian.com/us-news/2017/aug/29/houston-texas-harvey-recovery-efforts> (Aug. 29, 2017).

¹⁸⁹⁹ See *id.*

Evidence gathered during the Commission's investigation and briefing of Maria held in Puerto Rico was startling.

Regarding FEMA, by May 2018, FEMA received over 1.1 million applications for FEMA's Individuals and Households Program for damage assistance.¹⁹⁰⁰ Four Hundred and Fifty-Two Thousand (452,290) claims were approved with Three Hundred and Thirty-Five Thousand (335,748) denied.¹⁹⁰¹ It is estimated more than 260,000 homes in Puerto Rico do not have formal deeds or titles.¹⁹⁰² FEMA denied these homeowners repair/replacement compensation despite not having any rule requiring deeds to show ownership for the Program.¹⁹⁰³ Indeed, FEMA acted contrary its own Program guide, providing for the use of alternative proof of ownership.¹⁹⁰⁴

FEMA took eight months to allow affidavits to prove home ownership,¹⁹⁰⁵ an allowance it made in past disasters. Without communication, thousands of people were denied or missed the filing deadline. Many homes are still in disrepair, with blue tarps substituting for roofs.¹⁹⁰⁶

A Spanish speaking territory, FEMA sent English speakers and English forms to Puerto Rico.¹⁹⁰⁷ FEMA failed in provide meaningful help to people with disabilities as well, as exemplified by its decision to send sign linguists that signed English ASL rather than Puerto Rican (or Spanish) ASL.¹⁹⁰⁸

Of the over \$40 billion of approved recovery funds, FEMA has disbursed approximately \$16 billion.¹⁹⁰⁹ HUD obligated over \$18 billion, of which only \$823 million has been disbursed.¹⁹¹⁰

¹⁹⁰⁰ See Ivis Garcia, *Ownership in Puerto Rico is Crippling Repairs in the Aftermath of Hurricane Maria*, ABA Human Rights Magazine, vol.44 No.2 Housing, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/vol--44--no-2--housing/the-lack-of-proof-of-ownership-in-puerto-rico-is-crippling-repai/ (May 21, 2021).

¹⁹⁰¹ See *id.*

¹⁹⁰² See *id.*

¹⁹⁰³ *Id.*

¹⁹⁰⁴ See Individual and Households Program United Guidance, FEMA, [FEMA Individuals and Households Program Unified Guidance](#) at 17-18 (Sept. 30, 2016).

¹⁹⁰⁵ See Statement of Ariadna Michelle Godreau Aubert, Executive Director of Ayuda Legal Puerto Rico, before the U.S. Commission on Civil Rights, at 10 (Dec. 3, 2021).

¹⁹⁰⁶ See Nicole Acevedo, *Puerto Rico's Progress still Stalled Four Years After Maria*, NBC News, <https://www.nbcnews.com/news/latino/puerto-rico-four-years-hurricane-maria-far-recovery-rcna2073> (Sept. 19, 2021).

¹⁹⁰⁷ See *supra* note 4.

¹⁹⁰⁸ See *American Sign Language Interpreters are in Puerto Rico to help Residents who are Deaf or hard of Hearing Apply for Maria Aid*, FEMA Twitter, <https://twitter.com/fema/status/920360299684876288> (Oct. 17, 2017); see also *Puerto Rican Deaf Community Complains about Unqualified Interpreter During Earthquake Briefings*, The Daily Moth, <https://www.dailymoth.com/blog/puerto-rican-deaf-community-complains-about-unqualified-interpreter-during-earthquake-briefingsnbsp> (Jan. 13, 2020).

¹⁹⁰⁹ See *Financial Summary*, Puerto Rico Central Office for Recovery, Reconstruction, and Resiliency, <https://recovery.pr/en/financial-analysis/financial-summary> (Last accessed Jul. 20, 2022).

¹⁹¹⁰ See *id.*

While this report focuses on the federal response, there were failures at the state and territorial level as well – such as government’s negligence in helping those living with disability. For example, in the Governor’s Commission to Rebuild Texas’ after-action report on Harvey, which is over 170 pages long, there is no mention of how to better help those with disabilities, the elderly, or those with functional needs.¹⁹¹¹ There are, however, 11 mentions of what to do with pets.¹⁹¹² Regardless of how much blame is attributable to which government, it is past time for them to put the survivors of Harvey and Maria first and work together to provide all of these Americans with the assistance they require.

The President must direct FEMA and HUD to act with haste to complete the recovery process. This includes not only eliminating inappropriate barriers to the speedy disbursement of resources, but also increasing the frequency and quality of disaster training from FEMA to their state and territorial counterparts. Specifically, FEMA needs to focus on training state and local counterparts not only as to their civil rights obligations for those with disabilities, but how to practically implement programs to address those obligations. This means that FEMA must better prepare state and territories to address pre-disaster preparedness issues, such as ensuring that audio and visually impaired persons get vital information they need in an accessible manner, ensuring those with physical restrictions have a way to evacuate or navigate to a shelter, and those who are energy-dependent because of insulin or life support needs have access to reliable electricity, before ultimately shifting focus to disaster response. For example, in the immediate aftermath of Maria, there was only one centralized shelter for people with disabilities on the island,¹⁹¹³ and in Texas, the Texas Department of Emergency Management did not have a disability inclusion specialist to coordinate with FEMA to target disability-related issues.¹⁹¹⁴

While fraud enforcement surrounding disaster response programs is often a priority of the recovery landscape, and for good reason (In 2019, a former deputy administrator for FEMA was arrested for allegedly taking bribes from the president of a company that secured \$1.8 million in federal contracts to repair Puerto Rico’s electrical grid),¹⁹¹⁵ there should be a renewed focus on the contract granting and monitoring process to ensure that the companies and individuals receiving these contracts can produce results in a competent and timely manner. In an effort to deliver 30 million meals to Puerto Rico following Maria, FEMA awarded a \$156 million contract to an Atlanta based entrepreneur with no experience in large-scale disaster relief and a history of five

¹⁹¹¹ See Testimony of Dr. Laura Stough, Oct. 21, 2021 Texas Briefing Tr. at 65; see also *Eye of the Storm*, Governor’s Commission to Rebuild Texas, <https://www.rebuildtexas.today/wp-content/uploads/sites/52/2018/12/12-11-18-EYE-OF-THE-STORM-digital.pdf> (Nov. 2018).

¹⁹¹² See *id.*

¹⁹¹³ See Written Testimony of Dianne Yentel, Dec. 10, 2021, at 5.

¹⁹¹⁴ See Testimony of Dr. Laura Stough, Oct. 21, 2021 Texas Briefing Tr. at 45.

¹⁹¹⁵ Sunny Kim, *FEMA Official Arrested for Fraud over Hurricane Maria Recovery Effort in Puerto Rico*, CNN, <https://www.cnn.com/2019/09/10/fema-official-arrested-for-fraud-over-hurricane-maria-recovery-effort-in-puerto-rico.html> (updated Jan. 21, 2020).

cancelled government contracts.¹⁹¹⁶ To accomplish this 30 million food delivery, the contractor hired an 11 person wedding catering company.¹⁹¹⁷ By the time 18.5 million meals were due, she had delivered 50,000 – representing less than one-half percent.¹⁹¹⁸ Not only was the contractor grossly behind schedule, she had shipped the heating packets that were supposed to go with the meals entirely separately from the meals itself.¹⁹¹⁹ Stories like this are all too common. FEMA should create a comprehensive vetting system where contractors must be “pre-cleared” before being awarded contracts. This system should take into account previous contract experience, whether that contract was adequately completed or terminated (as well as why), and other risk indicators. We have strict requirements on providers who want to participate in other federal programs, such as Medicaid – requiring audits, background checks, and similar criteria; we can do it for people we pay hundreds of millions of taxpayer dollars.

Lastly, the President should reopen the application period of FEMA’s Individuals and Households Program so those that were wrongfully denied or missed the deadline because of insufficient or inadequate communication may reapply and secure the help they still desperately need. No more excuses.

The consequences are too great if we do not better our response to natural disasters. The science regarding climate change has told us that we can expect more rather than fewer disasters and the next storm will destroy even more lives.¹⁹²⁰ As the Commission’s report found, while it is common for people to think of these disasters as “leveling agents,” impacting everyone equally, that is not true. The truth is that the worst of these disasters have and continue to affect those in our society who can bear it the least. It is our job to ensure that this cycle comes to an end.

¹⁹¹⁶ See Patricia Mazzei and Agustin Armendariz, *FEMA Contract Called for 30 million Meals for Puerto Ricans. 50,000 were Delivered*, The New York Times, <https://www.nytimes.com/2018/02/06/us/fema-contract-puerto-rico.html> (Feb. 6, 2018).

¹⁹¹⁷ See *id.*

¹⁹¹⁸ See *id.*

¹⁹¹⁹ See *id.*

¹⁹²⁰ Puerto Rico, DataUSA, <https://datausa.io/profile/geo/puerto-rico/#:~:text=44.1%25%20of%20the%20population%20for.the%20national%20average%20of%2012.3%25> (Last accessed Jan. 3, 2022).

Statement of Commissioner Michael Yaki

1. Introduction

This Commission report¹⁹²¹ identifies and discusses the shortcomings of FEMA’s responses to 2017’s Hurricanes Harvey in Texas and Maria in Puerto Rico.¹⁹²² Divergent by geography, types of damage, political status, and population and demographics, the failure of FEMA to respond to the needs of persons of color and persons with disabilities is the common thread between both disasters.

I have some personal investment in this report. On October 17, 1989, I was the District Director for then-Congresswoman Nancy Pelosi when the Loma Prieta earthquake struck the San Francisco Bay Area at 5:04 pm. Beginning the next morning, I decided to review the Stafford Act, the statute governing FEMA’s emergency response duties. I was aware of the criticism that FEMA was beginning to receive over its response to Hurricane Hugo, and resolved to ensure that the constituents of our congressional district did not suffer the same fate. For the better part of a year, I fielded calls from constituents, visited damaged homes, and convened meetings with FEMA officials on a regular basis. It was eye-opening how little FEMA knew how to respond, even in a community of a compact 47 square miles, from suggesting that the Disaster Assistance Center – where they used to receive applications. The same stories we heard in our hearings -- missed appointments with inspectors, cursory reviews, and language access issues – I heard over 30 years ago.

Consequently, I have more than a passing interest in how FEMA has responded to disasters. I advised the Hawaiian Congressional delegation on the emergency response to Hurricane Iniki, and my southern California counterparts during the Northridge earthquake. I was on this Commission when Hurricane Katrina blasted New Orleans, devastated the Ninth Ward, and saw thousands of residents – predominantly black¹⁹²³ - suffer from an incompetent federal response,

¹⁹²¹ U.S. Comm’n on Civil Rights (USCCR), *Civil Rights and Protections During the Federal Response to Hurricanes Harvey and Maria—2022 Statutory Report*, September 2022 (hereinafter “Report”).

¹⁹²² I am pleased to have co-lead this project with my dedicated colleague, Commissioner Debo Adegbile. As the weighty and information-packed report demonstrates, we undertook briefings with panelists in three venues, including Puerto Rico. Commission leadership made many arduous efforts and ongoing adjustments to minimize the risks of COVID-19 transmission to and among our panelists, the interested public, and our dedicated staff while maintaining the quality of our investigation and its final outcome. With all these factors in mind, I respectfully thank all panelists, contributors, and the Commission leadership and staff who contributed their efforts and expertise to this long process and the resultant comprehensive, superior report. I also want to personally commend the people of Puerto Rico – Americans all – who continue to persevere in the face of ongoing indifference from the federal government.

¹⁹²³ One study showed that only 13% of the victims from the Ninth Ward – almost 98% black – received access to FEMA emergency housing trailers, while 63% of the victims from St. Bernard Parish – almost 95% white – received access to the trailers. Craemer, Thomas, “Evaluating Racial Disparities in Hurricane Katrina Relief Using Direct

led ignobly by FEMA.¹⁹²⁴ I proposed in late 2005 and in 2006 that the Commission investigate the racial disparities evident in the federal response. At the time, the Commission—then comprised of 6 appointees of Republican officials – refused to consider my request.

Fast forward over a decade later, and I watched many of the same issues surface again in Texas and Puerto Rico. But this time the Commission did not duck the issue.

What follows are my comments on the report.

2. Texas and Hurricane Harvey

The Commission’s report concludes that FEMA provided less relief, overall and per capita, to African American and Latinx survivors of Hurricane Harvey than it did to white applicants who requested aid. By way of context, research demonstrates that, insofar as racial identity is often tied to economic status in this country, this is an endemic problem in the universe of domestic disaster relief.¹⁹²⁵

Disaster relief has also been shown in practice to exacerbate this country’s racially-based wealth gap.¹⁹²⁶ It begins with chronic pre-disaster undervaluation of homes in majority-African American neighborhoods¹⁹²⁷ that puts families further behind when disaster strikes. It is made worse when FEMA awards black families 5-10% less than their white counterparts.¹⁹²⁸

Trailer Counts in New Orleans and FEMA records,” *Public Administration Review*, Vol. 70, No. 3, May/June 2010, https://www.researchgate.net/publication/229774478_Evaluating_Racial_Disparities_in_Hurricane_Katrina_Relief_Using_Direct_Trailer_Counts_in_New_Orleans_and_FEMA_Records.

¹⁹²⁴ A spokesperson for the Governor of Louisiana said “[w]e wanted soldiers, helicopters, food and water They wanted to negotiate an organizational chart.” Shane, Scott, “After Failures, Government Officials Play Blame Game,” *The New York Times*, September 5, 2005, <https://www.nytimes.com/2005/09/05/us/nationalspecial/after-failures-government-officials-play-blame-game.html>. Further, news reports apparently alerted FEMA Director Michael Brown that there were thousands of people without food and water for days at the convention center. See, e.g., CNN, “The Big Disconnect on New Orleans,” September 2, 2005.

¹⁹²⁵ Report at 66, citing research of Stough, et al. (Report n. 533), Commission testimony of David Bibo, Acting Associate Administrator for FEMA’s Office of Response and Recovery (Report n. 534), and TX State Advisory Committee testimony of Chishelle Palay, Director, H.O.M.E. Coalition (Report n. 535).

¹⁹²⁶ Ibid., at 66, citing Palay (Report n. 536), Howell and Elliott (Report n. 537, 538, 539, 540), See e.g., *FEMA National Advisory Council Report to the Administrator* (Report n. 541), Kathleen Tierney, Professor Emerita, University of Colorado, Boulder (Report n. 543, Ibid., internal citations omitted), Professor Elaine Enarson (Report n. 544, Ibid.), Tricia Wachtendorf, Director, University of Delaware Disaster Research Center (Report n. 545 - 547, Wachtendorf Testimony, *Texas Briefing*, pp. 21 – 27).

¹⁹²⁷ Ibid. at __, citing See e.g., Andre Perry, Jonathan Rothwell, and David Harshbarger, “The devaluation of assets in Black neighborhoods,” *Brookings Institute*, November 27, 2018, <https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/> (Report n. 548).

¹⁹²⁸ Ibid., at 75. In the cases of Hurricanes Harvey and Maria, “when Black homeowners were able to get their applications approved, FEMA awarded them between 5 and 10 percent less money on average than applicants in predominantly White areas.” These findings are likely due to the fact that homeowners in whiter zip codes have

Our report found that Hurricane Harvey survivors who were persons of color testified to the Commission that neighborhoods had been rejected for relief due to inspectors' perceptions of the families, that inspectors arrived with predetermined rejections planned, and that rejections for deferred maintenance were more commonly received in their neighborhoods than in majority-white ones.¹⁹²⁹ Some so-called "inspections" of homes in majority-minority neighborhoods consisted of drive-by photography.¹⁹³⁰ Numerous FEMA inspectors appeared fearful of majority-minority neighborhoods and of revealing insufficient Spanish-language skills for conducting the job at hand.¹⁹³¹

I have heard this story before. FEMA inspectors are drawn from several nationwide contractors,¹⁹³² not drawn from nor knowledgeable of the communities they visit. I am curious about the specifics of FEMA's civil rights commitments with regard to their contractors; specifically, whether contractors have diversity hiring goals and diversity training for persons who are making decisions that will drastically and dramatically affect a person or family's future. Further, FEMA should require its regional offices to fully engage with their local governments, and ensure that local government officials and employees with expertise in their areas are part of the initial briefing team for inspection contractors. Finally, FEMA should engage its legal counsel to delve into any property ownership issues unique to an area; in this case, it might have anticipated the heirship issue identified in our Report that had a disproportionate impact for black homeowners.

For black and Latinx Texans, Hurricane Harvey had 2 impacts. The first was the storm; the second was the relief effort. I have heard too often the defense that FEMA must prevent fraud, yet the most widespread fraud is perpetrated on, not by, victims of a disaster. Given the false stereotypes regarding welfare fraud,¹⁹³³ it is not a stretch to imagine that inspectors and line

higher property value and therefore "more" assessed damage. *See also* Ethan Raker, "Stratifying Disaster: State Aid, Institutional Processes, and Inequality in American Communities," *American Sociological Review R&R*, November 2020, <https://appam.confex.com/appam/2020/meetingapp.cgi/Paper/37750>.

¹⁹²⁹ *Ibid.*, citing Hirsch Statement, at 2 (Report n. 551).

¹⁹³⁰ *Ibid.*, citing Perrigue Gomez Statement, at 7 (Report n. 552).

¹⁹³¹ See Report pp. 67, citing Adi Martínez-Román, Director, UPR Resiliency Law Center of the University of Puerto Rico Law School, "Written Statement for the Federal Response to Hurricanes Maria and Harvey: Civil Rights Implications of Disaster Relief: Hurricane Maria in Puerto Rico Briefing before the U.S. Comm'n on Civil Rights," December 10, 2021, at 4 (Report, n. 553).

¹⁹³² FEMA, "Employment as a home inspector with FEMA?" Last updated February 5, 2020.

<https://www.fema.gov/faq/employment-home-inspector-fema>; WSP, "Become An Inspector, WSP is Hiring for the 2022 Hurricane Season, USA Inspection Services," (undated), <https://www.wspinspectionsservices.com/become-an-inspector>.

¹⁹³³ "When thinking about a welfare recipient, people tend to imagine someone who is African American and who is lazier and less competent than someone who doesn't receive welfare benefits . . . even though in reality beneficiaries include white, black, and Hispanic people in roughly equal proportions." "Image of 'Typical' Welfare Recipient Linked with Racial Stereotypes," *Psychological Science Latest Research News*, December 13, 2016,

evaluators carry that bias, whether implicit or explicit, against black and Latinx aid applicants. It certainly can explain some, if not all, of the disparities in our report. Black and Latinx applicants are victims of a disaster who are entitled to assistance, just as entitled as a white applicant. It is the responsibility of the federal government to assist, not deter, but the perceptions of many minority applicants are the latter, not the former. That needs to change.

3. Puerto Rico and Hurricane Maria

It is difficult to analyze the federal government's response to Hurricane Maria without understanding the unique history and political structure of Puerto Rico, and the relationship of Puerto Ricans to the federal government. Puerto Ricans are members of an unincorporated territory of the United States. Its residents are citizens of America. But its colonial history has some bearing on our analysis.

A. Overview of the History of Puerto Rico Prior to U.S. Colonialism

Puerto Rico's long history of human habitation prior to U.S. colonization is fraught with conflict and oppression. Hunter-gathers first made the island home.¹⁹³⁴ Arawak Indians, natives of the Greater Antilles,¹⁹³⁵ made their way to Puerto Rico by 1000 AD and grew into the Taino civilization.¹⁹³⁶ An estimated 20,000 to 50,000 Taino, also known as Boriquén, defended their island from assault by residents of neighboring islands.¹⁹³⁷ One author wrote: "Puerto Rico is one of the world's oldest colonies, having been under some form of military occupation or protectorate status since 1508."¹⁹³⁸

Spain controlled the island by 1509, and defeated a Taino rebellion in 1511.¹⁹³⁹ Spain enslaved the Taino people. By the time of their 1520 emancipation, most Taino had perished from their forced labor and living conditions or from diseases brought by Europeans.¹⁹⁴⁰ Tragically, a "census in 1530 report[ed] the existence of only 1148 Taíno remaining in Puerto Rico."¹⁹⁴¹ Racial conflict grew only more complex with the forced immigration of enslaved African people in 1513. The labor of enslaved people in Puerto Rico, which helped maximize the dollar value

<https://www.psychologicalscience.org/news/releases/image-of-typical-welfare-recipient-linked-with-racial-stereotypes.html>.

¹⁹³⁴ "History of Puerto Rico," *Britannica*, (undated), <https://www.britannica.com/place/Puerto-Rico/History>.

¹⁹³⁵ "Arawak people," *Britannica*, (undated), <https://www.britannica.com/topic/Arawak>.

¹⁹³⁶ "History of Puerto Rico," *supra* n. 1934.

¹⁹³⁷ *Ibid.*

¹⁹³⁸ Russell Schimmer, "Puerto Rico: Case Study: Colonial Genocide," Yale University Genocide Studies Program, (undated) (original footnotes omitted), <https://gsp.yale.edu/case-studies/colonial-genocides-project/puerto-rico>.

¹⁹³⁹ *Ibid.*

¹⁹⁴⁰ *Ibid.*

¹⁹⁴¹ *Ibid.*

of sugarcane, coffee, and tobacco production, continued until 1873.¹⁹⁴² Spain invested heavily to protect its economic interests in Puerto Rico by fortifying San Juan's military positioning and forts. This allowed Spain to repel attacks by European rivals.¹⁹⁴³ Spain also faced challenges to its power from within Puerto Rico. For example, "[i]n 1868, some 600 people attempted an uprising based in the mountain town of Lares. Though the Spanish military efficiently quashed the rebellion, Puerto Ricans still celebrate 'El Grito de Lares' (The Cry of Lares) as a moment of great national pride."¹⁹⁴⁴ Puerto Rico continued its work toward independence within the Spanish government, however, prior to the United States' military invasion. "On November 25, [1897], the "Carta Autonómica" (Autonomic Charter) [was] approved in which Spain concede[d] political and administrative autonomy to the island. It allowed the island to retain its representation in the Spanish Cortes, and provided for a bicameral legislature."¹⁹⁴⁵ That changed, however, with the Spanish-American war, which created – for the first time – colonies that belonged to the United States.

B. The Legacy of U.S. Colonialism

Ceded to the United States in the Treaty of Paris following the Spanish-American war, Puerto Rico was formally annexed by the U.S. government. Its former and then-current status as a colony has had enormous ramifications. One current commentator stated:

Puerto Rico's relationship with the U.S. is rooted in a history of discrimination. The island has been a territory of the United States since Spain ceded it in 1898, following America's invasion of it during the Spanish-American War. Three years later, the Insular Cases of 1901 made clear that Puerto Ricans were bound to an unequal, colonial relationship grounded in racism in which the island's residents were seen as inferior: The cases state the island is "inhabited by alien races" that could not understand "Anglo-Saxon principles," and is, as a territory, "belonging to the United States, but not a part of the United States." The Constitution's territorial clause gives Congress the power to determine which parts of the Constitution apply to territories and which do not; accordingly, Puerto Ricans were not granted citizenship until 1917, and only then so that they could serve in World War I. It took until 1947 for the people of the island to be given the right to vote for their own governor. Even today, only about half of American adults know that Puerto Ricans are U.S. citizens.

¹⁹⁴² Ibid.

¹⁹⁴³ "Puerto Rico," History.com editors, original September 28, 2017, updated September 15, 2020, <https://www.history.com/topics/us-states/puerto-rico-history>.

¹⁹⁴⁴ Ibid.

¹⁹⁴⁵ "History of Puerto Rico," 185 – 1899, *Welcome to Puerto Rico!* (undated), <https://welcome.topuertorico.org/history4.shtml>.

As a U.S. territory, Puerto Rico has a single non-voting delegate in Congress: its resident commissioner, representing a constituency that would be entitled to five seats and votes if it were located anywhere else in the nation. The island also is over 70 billion dollars in debt, but lacks many of the bankruptcy protections available to states. Scholars, politicians and activists agree that the current political status is unfair and unsustainable, but pro-statehood, pro-commonwealth and pro-independence perspectives constantly clash when looking for solutions.

This November, the island held its third status referendum of the decade, but regardless of its results — which favored statehood — the vote seems inconsequential. True power to amend Puerto Rico’s colonial relationship with the United States lies in the hands of the seemingly complacent federal government, where the people of the island have no representation. The nation’s legislators must heed the call of Puerto Ricans and make moving forward with a process of self-determination a priority.¹⁹⁴⁶

It is difficult to separate the ongoing second class status of Puerto Rico and any analysis of the response by FEMA to Hurricane Maria. The lack of adequate analysis of key vulnerabilities of Puerto Rico, as well as pre-positioning of emergency assets, created the dire, life-threatening emergencies emanating from the report.

4. FEMA’s Overreliance Upon, and Disaster Survivors’ Minimal Access to, Electronic Communications

When Maria hit Puerto Rico, cell phone, internet, and other telecommunications capabilities virtually entirely disappeared instantly. “Regarding telecommunications, at its worst, 95.6 percent of the cell sites were out of service in Puerto Rico, and wireless service was restored gradually over a six-month period.”¹⁹⁴⁷ This stands in stark contrast to the ability to access telecommunications services after Hurricane Harvey, as the “FCC report indicates that this type of outage was considerably longer than for the other 2017 storms (e.g., wireless communications services were generally restored a week and a half after Harvey’s landfall).”¹⁹⁴⁸

After Hurricane Maria, FEMA required those in need of assistance to apply via a telecommunications device, when access to paper applications was clearly needed on an island

¹⁹⁴⁶ Harold Peon, “It is 2020, and Puerto Rico Is Still a Colony,” *Harvard Political Review*, November 22, 2020, <https://harvardpolitics.com/puerto-rico-colony/>.

¹⁹⁴⁷ Report at 32 (original footnotes omitted).

¹⁹⁴⁸ *Ibid.*

without electricity.¹⁹⁴⁹ Even for those few who had access to an undamaged device with cell phone or internet capability in Puerto Rico any time in the months after Hurricane Maria struck, the process was virtually unmanageable. As the Commission learned from Mr. Chris Currie, Director, Homeland Security and Justice, U.S. Government Accountability Office, during his testimony at its June 25, 2021 briefing in this matter,

Our work has also shown areas where changes could help vulnerable populations. For example, after the 2017 disasters, we found that elderly survivors and the disabled face challenges in registering for and obtaining assistance.

For example, at the time there was no way for survivors to indicate a disability need when they registered with FEMA. We have recommended they do that. FEMA has since taken action to address that.

The groups also face challenges obtaining supplies because they couldn't reach centralized distribution centers. That was also a problem.

We also found that some components of FEMA's individual assistance enrollment process may unintentionally make it difficult for vulnerable populations to obtain assistance.

Multiple steps in this process can be confusing, can be highly technical, can be time consuming to navigate, requiring the survivor to follow-up with incomplete information. This lands harder on those with less education and jobs where they can't sit at a computer all day or be on the phone going back and forth with the federal government.

We have recommended that FEMA look at these components in their process for opportunities to streamline it where possible and that could encourage further participation and better outcomes for vulnerable populations.¹⁹⁵⁰

These answers, though earnest, are unacceptable. The digital divide in our country has been with us for decades. It is not something new and is not confined to vulnerable populations. Nearly half of Americans without at-home internet were in black and Latinx households, with double-digit disparities compared to white households.¹⁹⁵¹ In 2017, less than 70% of the population in Puerto

¹⁹⁴⁹ Ibid., at 14 (original footnote omitted).

¹⁹⁵⁰ Testimony of Chris Curry, Director, Homeland Security and Justice, U.S. Government Accountability Office, before the U.S. Commission on Civil Rights, Virtual Briefing Transcript (unedited), June 25, 2021, pp. 35, l. 20 – p. 36, l. 23 (on file).

¹⁹⁵¹ Chakravoti, Bhaskar, “How to Close the Digital Divide in the U.S.,” *Harvard Business Review*, July 2021.

Rico had access to the internet, a statistic readily available to anyone at FEMA.¹⁹⁵² This statistic alone should have militated against a digital-only access portal.

Paper/hard copy applications, while cumbersome, may sometimes be the only access point available for many at-risk populations.

FEMA must remediate the vulnerabilities for all disaster survivors which are inherent in its telecommunications-dependent assistance application systems. These vulnerabilities are built into any telecommunications-based system by the susceptibility that any severe to extreme weather event imposes upon the reliability of any telecommunications system. But as is amply demonstrated, restoration of these systems does not offer any guarantee that persons most in need of assistance will be able to access it. Reforms are long overdue and should be swift in execution. Anything less is not only an embarrassment to the United States; it is a dereliction of its duty to its citizens and residents.

FEMA engaged in a staggering level of overdependence upon electronic communications in this instance. There was an incalculable, resultant toll in human suffering and possibly death. Therefore, I also recommend any relevant outside investigations into FEMA's compliance with Section 508 of the Rehabilitation Act of 1973 and other pertinent sources of authority. Such investigation would be a key part of the groundwork for the development of overall best practices in disaster relief.

5. The Failure of, or Absence of, a Medical Emergency Response Plan

The death toll from Hurricane Maria – at first, a miraculously low number seized upon as a testament to the emergency actions of the federal government¹⁹⁵³ that quickly morphed into an ongoing nightmare as the body count continued to climb¹⁹⁵⁴ – shows the importance of having as part of any emergency response the mobilization of a medical – not just physical -- emergency response.

¹⁹⁵² See “Individuals using the Internet (% of the population) – Puerto Rico, 1990 – 2019,” *International Telecommunication Union (ITU) World Telecommunication/ICT Indicators Database*, The World Bank, (undated), <https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=PR>.

¹⁹⁵³ Then-President Trump, in his trip to San Juan two weeks after Maria made landfall, claimed that only 16 deaths were “certified” and that it was not a “real catastrophe” like Hurricane Katrina. “Puerto Rico: Trump compares Maria and Katrina deaths.” BBC, October 4, 2017, <https://www.bbc.com/news/world-us-canada-41487814>.

¹⁹⁵⁴ See, e.g., Sheri Fink, Nearly a Year After Hurricane Maria, Puerto Rico Revises Death Toll to 2,975, *The New York Times*, August 28, 2018, <https://www.nytimes.com/2018/08/28/us/puerto-rico-hurricane-maria-deaths.html>, Study estimates a prolonged increase in death rate in Puerto Rico in months following Hurricane Maria, Harvard T.H. Chan School of Public Health, May 29, 2018, <https://www.hsph.harvard.edu/news/press-releases/death-rate-increase-puerto-rico-hurricane-maria>.

An island, by its nature, suggests logistical challenges in any disaster response. It is utterly foreseeable that the medical infrastructure may be damaged, destroyed, and unlike the mainland, without the ability to easily cross jurisdictions that have medical facilities more readily accessible. Mutual aid is not really a possibility for an isolated archipelago like Hawaii, Puerto Rico, or the U.S. Virgin Islands.

FEMA bears primary responsibility for working with state and local governments to ensure that understanding local challenges and unique characteristics of any disaster response. It is not like hurricanes have not created damage on islands before. Hurricane Iniki devastated the island of Kauai in 1992;¹⁹⁵⁵ Hurricane Hugo swept over Puerto Rico in 1989.¹⁹⁵⁶

Medical Infrastructure Response

In the immediate aftermath of Hurricane Maria, without power, communications, and with considerable damage done to medical facilities throughout the island¹⁹⁵⁷, Puerto Rico's fragile health care system essentially collapsed.¹⁹⁵⁸

Carmen Yulin Cruz, the Mayor of San Juan during Hurricane Maria and its immediate aftermath, testified to the Commission at length on December 10, 2021. I found her testimony to be very detailed, wide-ranging, and credible. Mayor Cruz testified that, due to the inexplicably prolonged lack of FEMA generators, doctors performed surgeries by the light of cell phones.¹⁹⁵⁹

Mayor Cruz further testified that the hospital ship the *USNS Comfort* was not available to provide dialysis to patients undergoing conditions such as diabetic shock or renal failure.¹⁹⁶⁰ In fact, Mayor Cruz testified that the *Comfort* was barely accessible to the Puerto Rican population.

¹⁹⁵⁵ See e.g., HNN Staff, PHOTOS: 28 years ago, Hurricane Iniki devastated Kauai, Hawaii News Now, September 11, 2020, <https://www.hawaiinewsnow.com/2020/09/11/years-ago-hurricane-iniki-devastated-kauai/>.

¹⁹⁵⁶ See, e.g., Executive Summary, Hurricane Hugo, Puerto Rico, the Virgin Islands, and Charleston, South Carolina, September 17-22, 1989, National Academies Press, Washington, D.C., 1994, <https://nap.nationalacademies.org/read/1993/chapter/2>.

¹⁹⁵⁷ Robin Respaut, Dave Graham, Battered Puerto Rico hospitals on life support after Hurricane Maria, Reuters, September 24, 2017, <https://www.reuters.com/article/us-storm-maria-puertorico-hospitals/battered-puerto-rico-hospitals-on-life-support-after-hurricane-maria-idUSKCN1BZ13S>.

¹⁹⁵⁸ Sheila L. Rodriguez-Madera, Nelson Varas-Diaz, Mark Padilla, Kevin Grove, Kariela Rivera-Bustelo, Jeffrey Ramos, Violeta Contreras-Ramirez, Sergio Rivera-Rodriguez, Ricardo Vargas-Molia, Jose Santini, The Impact of Hurricane Maria on Puerto Rico's health system: post-disaster perceptions and experiences of health care providers and administrators, Global Health Research Policy 6, November 2021, <https://ghrp.biomedcentral.com/articles/10.1186/s41256-021-00228-w>.

¹⁹⁵⁹ USCCR Briefing transcript, December 10, 2021 at 75, l. 11 - 13

¹⁹⁶⁰ Ibid. at 75, l. 7 - 13.

In fact, the *Comfort* arrived 2 weeks after the disaster. In its 53-day deployment, it saw only an average of 6 patients a day. It did not have critical equipment to respond to treat premature babies, head trauma, and strokes requiring neurosurgery.¹⁹⁶¹

I do not fault the personnel aboard the *Comfort*. But I do fault a system of response that FEMA could and should have foreseen, and worked with the Defense Department to maximize the usage and capacity of the *Comfort* while it was berthed in Puerto Rico. Providing dialysis, given the by-then well-known deficiencies in the hospital infrastructure in Puerto Rico after Maria, should have been an assumed need. Cutting bureaucratic red tape that limited the patients who could avail themselves of the *Comfort* should have been another.

“We only managed to send two patients [to the ship] . . . The hospital ship had so many requirements in order to transfer a patient that it was impossible

At one point, it was said that they [administrators on USNS *Comfort*] did not want to admit cancer patients, they did not want to admit complicated trauma patients, and I was wondering, what are they going to admit then?¹⁹⁶²

Or, in lieu of the *Comfort*, the federal government could have flown in equipment and helped set up mobile dialysis units to help the vulnerable patients. But it was there, a behemoth presence on the waterfront but totally unavailable – practically a metaphor for the federal response.

Contrast this with the role that the *Comfort* played when New York was being ravaged in the early days of the COVID-19 pandemic. There, the *Comfort* was brought in to help treat patients who could not access emergency wards or operating theaters because hospitals were overwhelmed with COVID-19 patients. There, the *Comfort* offered dialysis to New Yorkers in need.¹⁹⁶³

Without a doubt, a large share of the blame is shouldered by the government of Puerto Rico in allowing its health care system to deteriorate to the point where Maria broke it.¹⁹⁶⁴ But the lack of any coordinated federal response, the slowness in which the *Comfort* was dispatched and the limited mission it was given, followed by years in which insurance claims were delayed and

¹⁹⁶¹ Frances Robles and Sheri Fink, Amid Puerto Rico Disaster, Hospital Ship Admitted just 6 Patients a Day, *New York Times*, December 6, 2017, <https://www.nytimes.com/2017/12/06/us/puerto-rico-hurricane-maria-hospital-ship.html>.

¹⁹⁶² Sheila L. Rodriguez-Madera, et al., *supra* n. 37.

¹⁹⁶³ Gidget Fuentes, Hospital Ship *Comfort* Ends NYC COVID-19 Mission After Treating 182 Patients, *USNI News*, April 27, 2020, <https://news.usni.org/2020/04/27/hospital-ship-comfort-ends-nyc-covid-19-mission-after-treating-182-patients>.

¹⁹⁶⁴ Sheila L. Rodriguez-Madera, et al., *supra* n. 37.

federal aid to rebuild hospitals and clinics did not arrive has resulted in a marked diminution of health care availability compared to pre-Maria Puerto Rico.¹⁹⁶⁵

The casual indifference of the federal government medical response to Puerto Rico is difficult to understand. Even a cursory look at the health demographics of the island would have quickly identified potential needs that might have to be supplemented quickly. And it brings me to this point -- the reason I have included the colonial treatment of Puerto Rico is precisely because of my belief that the status of Puerto Ricans as Americans has not been fully internalized by our government. These internal biases, I believe, impact the actions of individuals towards the people of the island of Puerto Rico, just as the history and legacy of slavery, Jim Crow, and race relations still influence, to our detriment as a people, actions on the mainland. .

Persons with Disabilities

This Commission has made many examinations of the challenges faced by persons with disabilities in our country. It should be no surprise that on an island, those challenges would be exacerbated.

At the Commission's June [2021] briefing, National Council on Disability Chairperson Andrés Gallegos explained that many individuals with disabilities on the Island were already vulnerable due to the limited infrastructure to support their needs prior to the hurricane, and that there was only one fully accessible centralized shelter for people with disabilities on the Island in the storm's aftermath. [According to Center for Disease Control and Prevention (CDC) data, almost 1.2 million adults in Puerto Rico have a disability, representing about 42 percent or 1 in 3 adults with the highest percentage having mobility difficulties (21 percent).

He further explained that in the 78 municipalities across the Island, many of the schools that were used as shelters were physically accessible (e.g., had a ramp for wheelchair access) for entrance, but they did not have accessible sleeping areas, showers, medical assistance or supplies, alternative power sources, or sign language interpreters. Gallegos reported that none of the shelters were prepared to address the needs of individuals with intellectual or developmental disabilities.¹⁹⁶⁶

Some Americans with disabilities were taken from Puerto Rico to the U.S. mainland with disastrous results.

¹⁹⁶⁵ Catherine Kim, A 13-year-old's death highlights Puerto Rico's post-Maria health care crisis, Vox, February 27, 2020, <https://www.vox.com/identities/2020/2/27/21150176/puerto-rico-health-care-hospital-access-hurricane-maria>.

¹⁹⁶⁶ Report at 149 – 150 (original footnotes omitted.)

The National Council on Disability conducted a focus group in Puerto Rico to delve into understanding the experience of disaster survivors who were institutionalized or threatened with institutionalization, finding that individuals with disabilities were not institutionalized, primarily because institutions were not functioning; and hospitals were also not functioning or were being used for sheltering, leaving patients to be evacuated to the continental U.S. Their focus group found that:

One group of young children who required uninterrupted power for medical devices were evacuated by private air services, coordinated by hospital physicians, to Florida and Texas. When they arrived on the mainland, they learned they were ineligible for hospital admission simply for access to an uninterrupted power source; they had nowhere else to go and at least one parent was threatened with having her child removed from her care and placed in a nursing facility because she (the evacuated parent) was considered homeless. Additionally, the parent was advised that their Puerto Rico-issued Medicaid was not portable, and they were not eligible for Florida Medicaid since they did not reside in the state prior to the disaster. To make matters worse, when advocates asked FEMA to assist this family, they were told, during a national stakeholder call, that the family was ineligible for FEMA assistance because they had not evacuated “correctly.”¹⁹⁶⁷

As in the previous section, I would recommend investigations into FEMA’s compliance with Section 508 of the Rehabilitation Act of 1973 and other pertinent sources of authority.

6. Disaster Relief in St. Croix and St. Thomas

St. Thomas is the chief island of the U.S Virgin Islands, located forty miles east of Puerto Rico.¹⁹⁶⁸ St. Croix and St. John are the other two U.S. Virgin Islands.

Hurricanes Irma and Maria pounded St. Croix as Category 4 storms only two weeks apart in late September and early October, 2017. St. Croix suffered terribly from both. FEMA reports that “Maria damaged or destroyed 70% of the buildings on St. Croix, including schools and the island’s only hospital.”¹⁹⁶⁹ Hurricane Maria hit St. Thomas to a lesser extent, but complicated

¹⁹⁶⁷ Report at 152.

¹⁹⁶⁸ Saint Thomas island, United States Virgin Islands, Britannica, (undated), <https://www.britannica.com/place/Saint-Thomas-island-United-States-Virgin-Islands>.

¹⁹⁶⁹ Recovery Support Function Leadership Group, USDA Tracks Recovery Following Hurricanes Irma & Maria, U.S Federal Emergency Management Agency, (undated), <https://recovery.fema.gov/funding-in-action/mariaPR7>

recovery from Hurricane Irma’s severe hit a mere two weeks prior. Irma had already caused millions of dollars to St. Thomas’ only hospital and moved functions to tents in the parking lot.¹⁹⁷⁰

FEMA asserts that it began to provide aid on the ground to the U.S. Virgin Islands quickly. By September 25, 2017, its press release stated that it “and its partners continue to provide life-saving and life-sustainment resources to Puerto Rico and the U.S. Virgin Islands...”¹⁹⁷¹ “In the U.S. Virgin Islands, 11 flights are scheduled to arrive Monday with 200,000 meals, 144,000 liters of water, and tarps. Barge movements are scheduled to arrive with over 70,000 tarps, vehicles and relief cargo.”¹⁹⁷²

¹⁹⁷⁰ With regard to health outcomes in the months following the storms, overall,

older, chronically ill patients were at particular risk because of the breakdown of family and social support networks and their associated support systems. With a tendency for disaster recovery operations to be dominated by a focus on physical as opposed to social infrastructure, nurturing social support networks are often neglected, and this impedes the resilience of the elderly. These social networks are of critical importance in this cultural setting during times of crisis with “aging in place” the norm in the St Thomian, Afro-Caribbean culture, as reflected in the fact that there are no rehabilitation, nursing home, or assisted living facilities on the island. (Muhammad Abdul Baker Chowdhury, MPH, MPS, MSc, Andrew J. Fiore, BPH, Scott A. Cohen, BS, Clayton Wheatley, MD, Barnard Wheatley, DBA, Meenakshi Puthucode Balakrishnan, PhD, MPH, Michael Chami, MD, Laura Scieszka, MD, Matthew Drabin, BS, Kelsey A. Roberts, BS, Alexandra C. Toben, BS, J. Adrian Tyndall, MD, MPH, Lynn M. Grattan, PhD, and J. Glenn Morris Jr, MD, MPH&TM, Health Impact of Hurricanes Irma and Maria on St Thomas and St. John, US Virgin Islands, 2017 – 2018, American Journal of Public Health, November 6, 2019, <https://ajph.aphapublications.org/doi/10.2105/AJPH.2019.305310>).

The emergence of mental health issues among children, was common. Among many other immediate and lingering concerns, approximately 40% showed signs of Post-Traumatic Stress Disorder in the months following the storms. (Greg Allen, After 2 Hurricanes, A “Floodgate” of Mental Health Issues in U.S. Virgin Islands, NPR, April 23, 2029, <https://www.npr.org/2019/04/23/716089187/after-two-hurricanes-a-floodgate-of-mental-health-issues-in-the-virgin-islands>).

As is the case with Puerto Rico, the number of storm-related deaths is unknown. “Of greater concern are the data that we do not have. Officially, 5 USVI deaths were associated with Hurricanes Irma and Maria. Extrapolating from the ratio of official deaths to hurricane-related excess deaths in Puerto Rico, it is possible that there were several hundred hurricane-related excess deaths in the USVI. However, as in Puerto Rico, data on which to base such estimates are limited. (Muhammad Abdul Baker Chowdhury, et al., supra, Health Impact of Hurricanes Irma and Maria on St Thomas and St. John, US Virgin Islands, 2017 – 2018, American Journal of Public Health, November 6, 2019, <https://ajph.aphapublications.org/doi/10.2105/AJPH.2019.305310>).

¹⁹⁷¹ Federal Agencies Continue Hurricane Maria Response and Relief Operations, U.S Federal Emergency Management Agency, September 25, 2017, <https://www.fema.gov/press-release/20210318/federal-agencies-continue-hurricane-maria-response-and-relief-operations>.

¹⁹⁷² Ibid.

The Commission did not have the time or resources to examine the real impact – or lack thereof – of the federal government’s response to the USVI. However, the many claims made by the federal government with regard to its response to Puerto Rico should give any rational person pause. Perhaps the first State Advisory Committee for the Commission, approved in July 2022, may decide to adopt this as a topic and provide this information to the Commission.¹⁹⁷³

7. Conclusion

Hurricanes Harvey and Maria took two different paths, but converged in many ways in the difficulties that persons of color and persons with disabilities experienced in their dealing with the federal government agencies charged with the response to the disaster.

If you were black and impacted by Harvey, you had a harder hill to climb for federal aid. If you were not in a predominantly white neighborhood, it was expected that you would receive poorer treatment by federal inspectors and less aid. While not at Katrina-like levels of disparate treatment, nevertheless the fact that over a decade since Katrina FEMA has not yet figured out how to close the racial gap is disturbing.

If you were a Puerto Rican national, you faced perceptions that you were not really Americans, where FEMA’s complete lack of preparedness to respond to Maria seemed directly proportional to that perception. The delayed and feeble federal response across the board – where FEMA did not have the capacity to rapidly – if at all – address the physical and medical infrastructure failures confronting Puerto Rico led to a death toll over six months that surpassed Katrina’s.

In both disasters, failures to respond to the needs of persons with disabilities loomed large.

In both disasters, it fell to local community organizations to help homeowners understand the disaster assistance application and, too often, an appeals process that seemed opaque, arbitrary, and culturally misinformed about the communities that FEMA was supposed to assist.

In both disasters, the color of your skin or your perceived nationality determined how you were treated by FEMA inspectors, how closely your application was reviewed by FEMA and, ultimately how much (or little) aid you were awarded – if you were awarded any at all.

¹⁹⁷³ The Rand Corporation published an extensive 2020 analysis entitled Recovery in the U.S. Virgin Islands: Progress, Challenges, and Options for the Future¹⁹⁷³ which proposes recalibrating infrastructure and setting forth comprehensive recommendations for an improved regional recovery process and which might be of use to the USVI SAC. See Shelly Culbertson, Blas Nunez-Neto, Joie D. Acosta, Cynthia R. Cook, Andrew Laud, Kristin J. Leuschner, Shanthi Nataraj, Benjamin Lee Preston, Susan A. Resetar, Adam C. Resnick, et al., Recovery in the U.S. Virgin Islands: Progress, Challenges, and Options for the Future, The Rand Corporation, 2020, https://www.rand.org/pubs/research_reports/RRA282-1.html.

In both disasters, issues regarding property ownership unique to both Texas and Puerto Rico began to be gradually resolved as the FEMA bureaucracy finally grappled with issues of heirship in Texas, or the legacy of slavery with the lack of title deeds in Puerto Rico. Yet, inexplicably, any resolution in favor of these issues only applied prospectively, and not to the hundreds or thousands of homeowners denied prior to this resolution. To this day, FEMA has yet to contact anyone denied for reasons on perceived heirship or title deed defects. That is not only unacceptable, it is a betrayal of the promise of federal aid.

In my experience as an observer of FEMA over the years, FEMA has a very one-size-fits-all approach to disasters.¹⁹⁷⁴ Our nation, however, is too complex for a cookie-cutter response. As climate change worsens, the hardest hit areas will be communities that have already been marginalized to floodplains, coastal lowlands. There is ample evidence that redlining and zoning¹⁹⁷⁵ and planning often place minority populations in the least desirable land,¹⁹⁷⁶ co-located with environmentally questionable industries, toxic lands, and poor infrastructure.¹⁹⁷⁷ As the gap between rich and poor continues to increase, the poor – primarily people of color -- will fall further and further behind in being able to rebuild their homes, their communities, to take the steps necessary to harden their neighborhoods against future storms. FEMA and the federal government have done little to nothing to ameliorate these structural deficiencies, which means when the next storm hits – and they will – these vulnerable communities, homeowners, families will continue to fall further and further behind whiter, more affluent communities.

FEMA, as the lead agency in responding to natural disasters, needs to make its regional offices much more active in shaping and tailoring the federal response to account for language, cultural, and infrastructure differences. These regional offices, often staffed by political appointees, are the tip of the spear for any response, yet you never hear or see from them once the national offices “take over” the disaster response. Increasing accountability; expanding their mission; ensuring that emergency plans are coordinated with local government’s own emergency planning, which will – hopefully, more often than not – be cognizant of the challenges in responding to disasters in their own communities.

¹⁹⁷⁴ In the pre-Loma Prieta era of FEMA, FEMA only knew hurricanes and relocating people into trailers as temporary housing (which still comprises a large proportion of their response). In a densely populated urban city like San Francisco, that didn’t work. We also found that FEMA only understood single family homes, and urban multifamily and condos and cooperatives were foreign to them.

¹⁹⁷⁵ U.S. Comm’n on Civil Rights, Zoning Practices in Connecticut, Advisory Committee Report, April 22, 2022, <https://www.usccr.gov/reports/2022/zoning-practices-connecticut>.

¹⁹⁷⁶ Partick Galey, Black neighborhoods at risk as climate change accelerates flooding, NBC News, January 31, 2022, <https://www.nbcnews.com/science/environment/black-neighborhoods-risk-climate-change-accelerates-flooding-rcna13756>.

¹⁹⁷⁷ U.S. Comm’n on Civil Rights, Environmental Justice: Examining the Environmental Protection Agency’s Compliance and Enforcement of Title VI and Executive Order 12,898, September 2016, https://www.usccr.gov/files/pubs/2016/Statutory_Enforcement_Report2016.pdf.

FEMA should ask these questions of every state and territory in the country, in no particular order:

- What languages other than English are spoken, and in what communities and areas of a state or territory is it more prominent?
- Are there adequate translation services and enough collateral and materials translated into languages appropriate to meet the needs of these communities?
- What is the state of physical (road) infrastructure between communities. Are there natural barriers (mountains, bodies of water) that make it uniquely vulnerable to being cut off, and what contingencies should be accounted for in any response?
- What are the geographic/infrastructure challenges of delivering aid? Is it an island, a peninsula with only two roads of access, availability of airports, bridges, ports? Although it seems pretty obvious, but this affects where and when pre-positioning of emergency resources, and well as what types of emergency resources should be pre-positioned.
- What is the status of the communications infrastructure. What is the state of internet penetration? Will this impact tele-applications for assistance, or contacting homeowners for inspections?
- State of power infrastructure. Have there been any identified weaknesses or vulnerabilities in a state of emergency? Perhaps FEMA, rather than sole source bidding to questionable vendors¹⁹⁷⁸, should instead find a company familiar with working with the systems in place, the terrain that will be encountered
- State of medical infrastructure. Same analysis – weaknesses or vulnerabilities. Are there sufficient facilities throughout the state/territory, or accessible alternatives. If not, what resources will be required to guard against excessive deaths due to inability to access proper medical care in the weeks and months after a disaster?
- State of laws regarding home ownership. The issue of heirship, in Texas, and the title deed anomaly in Puerto Rico – these need to be identified in every state or territory and discussed with local legal experts, ideally, as part of a comprehensive response plan, and not on-the-fly on site of a disaster.

If this sounds like a 50 state plus DC plus territory plan, it is. There cannot be a one-size-fits-all disaster response plan for a country spread over 3 million square miles in the lower 48 separated by mountains, rivers, and deserts, and where the state of Hawaii and the unincorporated territories lie thousands of miles away over open oceans from our mainland.

¹⁹⁷⁸ FEMA officials contractor accused of hurricane relief fraud, PBS, September 10, 2019, <https://www.pbs.org/newshour/nation/fema-officials-contractor-accused-of-hurricane-fraud>.

To be a truly national response agency, FEMA must tailor its response to every part of the nation. We are one nation, but we are many peoples, and the unique beauty and challenge of these United States is that in responding to a disaster we should, we must leave no one behind, regardless of race, color, creed, national origin, gender, income, or status. For all the relief that FEMA does provide, it does leave people behind, people who are the most vulnerable, who have faced and continue to experience discrimination.

Over 30 years since I had my own personal experience with responding to a natural disaster, it continues to baffle and trouble me that FEMA continues to struggle with its core mission of helping communities to respond and recover. This transcends party or ideological lines. Red state or blue state, when communities are bludgeoned by tornado, hurricane, flood, fire, and earthquake, it is in the nature of every American to want to help. We donate to the Red Cross. Our local governments send supplies, medical and rescue teams, and money. We don't ask whether they are rich, poor, white, black, national origin, or other personal circumstance. Yet, as our report demonstrates, FEMA's response often falls short exactly along those lines.

Finally, in a country more divided along partisan lines than ever before, a unifying symbol of how our federal government is about United – not divided – States can be embodied in a national organization dedicated to helping all Americans. If there is one reason to reform and reconstitute FEMA into the effective federal first responder on behalf of all America and Americans, this is that reason. We can do better. We must do better.

Appendix A: Former President Donald J. Trump’s Expressed Attitudes Regarding Puerto Rico After Hurricane Maria

To the extent that latent or overt issues of racism may have played a role in the federal response to Hurricane Maria vis-à-vis that to Hurricane Harvey, former President Donald J. Trump’s relevant words and behavior before, during, and after his time in Puerto Rico during disaster relief efforts after Hurricane Maria are documented here. Each of these reports is almost entirely redundant to multiple repetitions, in the forms of newscasts, videos, and print, among dozens of credible domestic and global media outlets.

These sources document hostile, biased and critical declarations made against the American citizens residing in Puerto Rico. As the chief executive officer over agencies such as FEMA, it is not difficult to believe that officers, employees, and agents of FEMA were affected by Trump’s statements. As the head of state, statements that belittle and negatively stereotype the citizens of his own country suffering from a disaster is anathema to the nature of emergency response.

Amy Davidson Sorkin, *The Distance Between Donald Trump and Puerto Rico*, *The New Yorker*, September 27, 2017, <https://www.newyorker.com/news/amy-davidson-sorkin/the-distance-between-donald-trump-and-puerto-rico>.

“This is an island sitting in the middle of an ocean. And it’s a big ocean, it’s a very big ocean,” he said, on Tuesday morning, before a meeting with House members.

...

But instead of emphasizing [its] closeness, or a sense of mutual obligation, Trump has, so far, focussed [sic] on how different Puerto Rico is, and what its people owe *him*, which is, above all, their gratitude.

“We have been really treated very, very nicely by the governor and by everybody else,” Trump said later, during a press conference on Tuesday afternoon with Mariano Rajoy, the Prime Minister of Spain. Trump was referring to the governor of Puerto Rico, Ricardo Rosselló, and his colleagues. “They know how hard we’re working and what a good job we’re doing.” When a reporter nonetheless asked Trump whether he had perhaps spent a disproportionate amount of time tweeting complaints about N.F.L. players kneeling during the national anthem, when he should have been rallying support for Puerto Rico, Trump bristled, and insisted that his attacks on the players were important for America. Then he went back to talking about what he had done for Puerto Rico—“I have plenty of time on my hands”—adding that the governor “is so grateful for the job we are doing. In fact, he thanked me specifically for *fema* [sic] and all the first

responders.” Trump described that praise as “incredible” and “amazing,” and said, “We have had tremendous reviews from government officials.”

...

Governor Rosselló, as it happened, had spent the previous day giving interviews during which he had called urgently for more help for the island.

...

In a series of tweets on Monday night, which marked Trump’s first comments on Puerto Rico after a long interval, he stressed how different it was from Texas and Florida, because of logistics (it is an island) and also financial status. “Texas & Florida are doing great but Puerto Rico, which was already suffering from broken infrastructure & massive debt, is in deep trouble...” the tweets began. “It’s [sic] old electrical grid, which was in terrible shape, was devastated. Much of the Island was destroyed, with billions of dollars....”—he continued the thought in a third tweet—“owed to Wall Street and the banks which, sadly, must be dealt with. Food, water and medical are top priorities—and doing well. #FEMA.”

Trump’s reminder that Puerto Rico has bills to pay was, at best, ill-timed. In fact, it was hard to read it as anything but an injunction to lower expectations: Puerto Ricans were already poor—why would anyone think they would, or should, be in as good shape as Florida or Texas? Meanwhile, his comment about food, water, and medical care “doing well” was demonstrably false.

Shawn Donnan, Trump launches new attack on Puerto Rico “ingrates,” Financial Times, October 1, 2017, <https://www.ft.com/content/fda1ac52-a5fa-11e7-ab55-27219df83c97>.

In an escalating Twitter barrage, the US President has branded media reports of people struggling to obtain food and water more than a week after Hurricane Maria “fake news” and lashed out at critics in Puerto Rico.

“We have done a great job with the almost impossible situation in Pierto Rico. Outside of the Fake [sic] News [sic] or politically motivated ingrates, people are now starting to recognize the amazing work that has been done by [the Federal Emergency Management Agency] and our great Military,” the president tweeted on Sunday.

Most of the criticism also began to focus on him displaying a more muted sense of urgency toward the crisis than he did after hurricanes Harvey and Irma hit Texas and Florida over the summer.

And over the weekend that criticism also began to focus on whether a president who began his campaign in 2015 by dubbing Mexican immigrants criminals and rapists saw Puerto Rico's Hispanic population through a different lens than other US citizens on the mainland.

President Trump tosses paper towel rolls to the crowd and says "There's a lot of love in this room." CNN, October 3, 2017, <https://www.cnn.com/videos/politics/2017/10/03/donald-trump-puerto-rico-supplies-von.cnn>.

Mark Landler, Trump Lobs Praise, and Paper Towels, to Puerto Rico Storm Victims, New York Times, October 3, 2017, <https://www.nytimes.com/2017/10/03/us/puerto-rico-trump-hurricane.html>.

Mr. Trump ... repeated his earlier criticism that some Puerto Ricans were not doing enough to help themselves. Despite the roads being cleared and communications being re-established, he said, truck drivers were not transporting enough supplies. "We need their truck drivers to start driving trucks," he said. "On a local level, they have to give us more help."

On Saturday, after [Mayor] Cruz angrily disputed the administration's assertion that the relief effort was going well, the president fired back in a Twitter post that she had been instructed by Democrats to be "nasty to Trump," and added that Puerto Ricans "want everything to be done for them."

Trump hails 'incredible' response in 'lovely' trip to storm-torn Puerto Rico, The Washington Post, https://www.washingtonpost.com/politics/trump-praises-himself-for-administrations-great-job-in-puerto-rico/2017/10/03/fdb5eeb4-a83a-11e7-8ed2-c7114e6ac460_story.html?hpid=hp_hp-more-top-stories_trump-11am%3Ahomepage%2Fstory&utm_term=.7bd819c3f0de.

David A. Graham, Trump's Puerto Rico Visit Is a Political Disaster, The Atlantic, October 3, 2017, <https://www.theatlantic.com/politics/archive/2017/10/trump-puerto-rico-visit/541869/>.

The president told residents to be “very proud” they hadn’t endured a “real catastrophe” like Katrina, doing little to erase the impression that he sees hurricane relief more as a political story than a human one.

...

“Every death is a horror, but if you look at a real catastrophe like Katrina, and you look at the tremendous hundreds and hundreds and hundreds of people that died, and you look at what happened here and what is your death count? Sixteen people, versus in the thousands,” Trump said. “You can be very proud. Sixteen versus literally thousands of people.”

That statement is problematic in several ways. The idea that Maria was not a “real catastrophe” defies all evidence, and any discussion of the death toll is premature. While the official number remains at 16, where it has been for several days without update, officials have acknowledged it will end up much higher. The Center for Investigative Journalism reported Monday that “dozens” of people are dead, with bodies piling up in morgues, even as the official count has not kept pace. Trump’s decision to use Hurricane Katrina as a benchmark also makes little sense and belittles the suffering in Puerto Rico. Katrina is both the deadliest hurricane in U.S. history since 1928 and a prime example of a mismanaged disaster. Trump also overstated the toll of Katrina, which was less than 2,000.

Trump also misstated Maria’s strength at landfall. Few people have ever even heard of a Category 5 hitting land, but it hit land, and boy did it hit land,’ he said, but the storm was a Category-4 storm when it struck. Trump also said the Coast Guard had saved 16,000 lives in Texas. It’s unclear where he got that number; the Coast Guard has claimed 11,000 rescues.

Puerto Rico: Trump paper towel-throwing 'abominable,' BBC, October 4, 2017, <https://www.bbc.com/news/world-us-canada-41504165>.

'Second-class citizens'
Aleem Maqbool, BBC News, San Juan

Mr Trump also pointed to the impact of the cost of storm recovery on US domestic spending, which was already facing a budget shortfall of \$72bn (£54bn), telling Puerto Ricans "you've thrown our budget a little out of whack... but that's fine".

After his meeting, he toured in and around San Juan, stopping at a church to hand out relief supplies and throwing paper towels into the crowd.

At one point he reportedly glanced at a pile of solar-powered flashlights and - apparently unaware of the ongoing power problems - said "you don't need 'em anymore", the Washington Post reports.

Mayor Carmen Yulin Cruz told MSNBC after the visit that his meeting with officials had been a PR exercise in which "there was no exchange with anybody, with none of the mayors."

Puerto Rico: Trump appears to complain about cost of relief effort, The Guardian, October 4, 2017, <https://www.theguardian.com/world/2017/oct/03/puerto-rico-donald-trump-visit-hurricane-maria>.

Donald Trump has heaped praise on his administration's response to Hurricane Maria, said Puerto Rico's leaders should be "very proud" of the low official death toll – and appeared to complain at the cost of the recovery effort.

The US president's remarks came on his first visit to the US territory since it was pummeled by a category 4 hurricane nearly two weeks ago, amid continuing criticism that his government has failed to adequately respond to the crisis.

The island's 3.4 million residents – particularly those in the more isolated parts – are still largely without electricity, communications and access to clean drinking water and food.

But Trump told reporters: "It's now acknowledged what a great job we've done."

Speaking at a briefing shortly after his arrival, Trump told local officials: "I hate to tell you, Puerto Rico, but you've thrown our budget a little out of whack."

President Trump calls Puerto Rico "one of the most corrupt places on Earth," August 19, 2019, ABC News, <https://www.youtube.com/watch?v=uz53jNXJFqs>.

Tucker Higgins, Trump unloads on 'corrupt' Puerto Rico as Tropical Storm Dorian threatens island — San Juan mayor tells him to 'calm down,' CNBC, August 28, 2019,

<https://www.cnbc.com/2019/08/28/trump-unloads-on-puerto-rico-as-tropical-storm-dorian-threatens-island.html>.

President Donald Trump bore down on Puerto Rico on Wednesday as Tropical Storm Dorian threatened to become the first powerful storm to hit the island since it was devastated by Hurricane Maria nearly two years ago.

“Puerto Rico is one of the most corrupt places on earth. Their political system is broken and their politicians are either Incompetent or Corrupt. Congress approved Billions of Dollars last time, more than anyplace else has ever gotten, and it is sent to Crooked Pols. No good!” Trump wrote in a post on Twitter.

“And by the way, I’m the best thing that’s ever happened to Puerto Rico!” he added.

Calvin Woodward, Hope Yen, AP FACT CHECK: Trump’s swipe at Puerto Rico, G-7 comments, August 31, 2019, <https://apnews.com/article/health-puerto-rico-donald-trump-ap-top-news-barack-obama-5b73234261e14b70916c15ecb8b7ff9b>.

A look at some statements by Trump and his team during a week bookended by the Group of Seven summit and the approach of Hurricane Dorian to the U.S. mainland after it brushed past Puerto Rico and the Virgin Islands.

PUERTO RICO

TRUMP, on hurricane aid: “Will it ever end? Congress approved 92 Billion Dollars for Puerto Rico last year, an all time record of its kind for ‘anywhere.’” — tweet Tuesday.

TRUMP, on Puerto Rico: “Congress approved Billions of Dollars last time, more than anyplace else has ever gotten.” — tweet Wednesday.

THE FACTS: His figure of \$92 billion is wrong, as is his assertion that the U.S. territory has set some record for federal disaster aid. Congress has so far distributed only about \$14 billion for Puerto Rico.

It’s a false claim he’s made repeatedly. The White House has said the estimate includes about \$50 billion in expected future disaster disbursements that could span decades, along with \$42.7 billion approved.

That \$50 billion in additional money, however, is speculative. It is based on Puerto Rico's eligibility for federal emergency disaster funds for years ahead, involving calamities that haven't happened.

That money would require future appropriations by Congress.

Even if correct, \$92 billion would not be the most ever provided for hurricane rebuilding efforts. Hurricane Katrina in 2005 cost the U.S. government more than \$120 billion — the bulk of it going to Louisiana.

Trump frequently inflates and complains about the amount of disaster aid that Congress “foolishly gave” Puerto Rico after the deadly destruction from Hurricane Maria in 2017. He has talked as if he doesn't recognize the U.S. territory as American and, in an April tweet, said Puerto Rico officials “only take from USA.”

Hurricane Dorian inflicted limited damage in Puerto Rico and the Virgin Islands before intensifying on its track toward the U.S. mainland.

Steven Lemongello, Puerto Ricans in Orlando slam Trump for calling Hurricane Maria response 'successful,' Orlando Sentinel, September 11, 2019, <https://www.orlandosentinel.com/politics/os-trump-puerto-rico-comments-20180911-story.html>.

“I think that Puerto Rico was an incredible unsung success,” Trump said in a CBS News transcript, comparing the situation there with Hurricane Harvey in Texas and Hurricane Irma in Florida. “Texas, we have been given A pluses for, Florida, we have been given A pluses for. I think in a way the best job we did was [in] Puerto Rico, but nobody would understand that.”

Rebecca Klar, Former DHS official: Trump called Puerto Rico ‘dirty,’ asked to trade it for Greenland, The Hill, August 19, 2020, <https://thehill.com/homenews/administration/512840-former-dhs-official-trump-called-puerto-rico-dirty-asked-to-trade-it/>.

“The president's talked before about wanting to purchase Greenland, but one time before we went down, he told us not only did he want to purchase Greenland, he actually said he wanted to see if we could sell Puerto Rico. Could we swap Puerto Rico for Greenland,” [former chief of staff to the former Department for

Homeland Security Secretary Kirstjen Nielsen, Miles] Taylor said Wednesday on MSNBC. “Because in his words Puerto Rico was dirty and the people were poor.”

“We don’t talk about our fellow Americans that way,” Taylor added. “The fact that the president of the United States wanted to take a U.S. territory of Americans and swap it for a foreign country is beyond galling.”

He said the president made the comment before a trip in August 2018.

...

[Miles} said Trump expressed “deep animus toward the Puerto Rican people behind the scenes.”

“These are people who are recovering from the worst disaster of their lifetime. He is their president, he should be standing by them, not trying to sell them off to a foreign country,” Taylor said.

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Dissenting Statement of Commissioner Adams

I dissent from the Report because it misses the mark regarding the true reasons for the mayhem and tragedy surrounding FEMA's efforts to deal with two separate natural disasters: Hurricane Harvey and Hurricane Maria. My dissent first notes that when this Commission produces a report with some valuable and accurate aspects, I will vote for it, as I did for "The Civil Rights Implications of Cash Bail." This report on FEMA, unfortunately, does not merit support.

The Report puts blame in the wrong place. It infers that bureaucracies can solve calamities associated with an Act of God. It credits witnesses who would prefer that the American taxpayers pay for an expansive range of remedial actions without safeguards or basic accountability.

But in the end, the Report suffers from a fundamental defect that permeates the entire report – it ascribes racial motivation when instead political status and the inherent limits on man's ability to cure the most devastating effects of nature explain what happened after these two hurricanes. Man can only do so much. Bureaucracies cannot fix all of the human and property devastation from a Category 5 monster. FEMA can help for sure. But in the end, it is hubris to blame bureaucracies for the aftermath of these two monster storms.

The political status of Puerto Rico was also central to this story, and the Report fails to place adequate significance on these political status questions. Witnesses agreed with me that political status was central to what happened in the aftermath of Maria. More than race or racially disparate treatment, the fact that Puerto Rico is a territory, the fact that bona fide residents of Puerto Rico pay no federal income taxes, the fact that Puerto Rico has no representation in Congress – these had more to do with the aftermath of Maria than did race.

But there are other shortcomings in this Report.

Questionable Accuracy of Human Costs

The Report leaves a fair reader questioning the methodology of calculating the accurate number of deaths attributable to the hurricanes. On pages 9 and 10, the Report says that Harvey caused 68 deaths while Maria's "official death toll" is 2,975. This number is problematic.

On page 20, the report mentions that if "indirect deaths" are counted Harvey may have caused more than 103 deaths. It is not until page 29 that the Report finally acknowledges that NOAA originally estimated Maria's "direct death" toll at 65 – when it used the same historical standard used to calculate Harvey's 68 "direct deaths." Then the Report finally points out that NOAA updated its "official" death toll for Maria to 2,900 and the Puerto Rico governments' official toll is 2,975 deaths.

One might ask the reasonable question, how did the death toll jump from 65 to 2,975, suddenly, a year after the storm?

The leap was enabled by a study supported by the government of Puerto Rico. It utilized an unconventional method to calculate deaths. Instead of counting *actual* deaths caused by the storm, “the study looked at historical death patterns from 2010 to 2017 to estimate how many people would have died had Hurricane Maria not hit the island.”¹⁹⁷⁹ This was accomplished by counting the “excess dead” based on the normal number of dead from 2010. In other words, the study didn’t really count people who died from the storm (a figure originally fixed at 65), but rather counted everyone who died during a five-month window above the average from the previous six years and blamed Maria for the deaths. It doesn’t take a statistician to see the flaws in this methodology.

More to the point, this flawed methodology has never been used to calculate fatalities from a previous natural disaster. And for good reason, as it cannot control for the thousands of other possible independent variables that affect a specific death.

Nor can the motivation behind this flimsy method be overlooked. The government of Puerto Rico funded the study, and naturally the results are being used a myriad of ways by the study’s funders themselves.

A Cascading Series of Disasters and Limits of FEMA Effectiveness

Instead of race, the aftermath of the twin hurricanes had more to do with FEMA’s limitations because of a cascading series of natural disasters. It is not credible to overlook the chain of disasters that characterized 2017 as a cause of many of the circumstances outlined in the Report.

The second costliest California wildfire season ever occurred throughout 2017, and then in quick succession Hurricane Harvey struck Houston on August 26, Hurricane Irma struck Puerto Rico and the Virgin Islands on September 6 and Florida on September 10, and then Puerto Rico and the U.S. Virgin Islands were struck again by Hurricane Maria on September 20.

As FEMA’s Joint written testimony for the Commission’s June 25, 2021 hearing noted:

The unprecedented scale, scope, and impacts of the complex combination of hurricanes Harvey, Irma, and Maria and the California Wildfires challenged the capabilities of FEMA and the response community. For example, the concurrent timing and scale of disaster damages nationwide caused shortages in available debris removal contractors and

¹⁹⁷⁹ <https://www.cbsnews.com/news/hurricane-maria-death-toll-puerto-rico-2975-killed-by-storm-study-finds/>

delays in removing disaster debris—a key first step in recovery. (*See page 5 of the Joint FEMA statement.*)

Jeffrey Byard, the then Associate Administrator in FEMA’s Office of Response and Recovery, concluded his testimony on April 11, 2018 to the House Energy and Commerce Committee’s Subcommittee on Oversight and Investigations as follows:

Within one month’s time, FEMA was responding to three major hurricanes, two of which hit the USVI and Puerto Rico within two weeks. By the end of 2017, FEMA registered more than 4.7 million survivors for individual assistance—more registrations than for Hurricanes Rita, Wilma, Katrina, and Sandy combined. The Agency had also distributed more than \$2 billion in individual assistance to survivors, processed 133,000 flood insurance claims, and paid out more than \$6.3 billion to policyholders across the country. (*See page 7 of the testimony.*)¹⁹⁸⁰

Disaster Challenges Unique to Puerto Rico: Failure of Local Government to Prepare

The extreme devastation in Puerto Rico was well beyond what FEMA and the local government’s disaster plans had ever projected as Maria was the worst hurricane to hit the island in over 85 years. Combined with the island’s remoteness (over 1,000 miles from the U.S. mainland), FEMA was presented with unprecedented challenges in deploying personnel and providing relief.

As Rob Moore, senior policy analyst with the Natural Resources Defense Council, summed up in his Expert Blog on September 19, 2018:

Multiple things went wrong in Puerto Rico. Puerto Rico was in the midst of a financial crisis well before Maria hit, which contributed to multiple systemic failures. ... But many of the problems around the disaster response itself stem from how thinly stretched FEMA was by the multiple disasters that occurred in 2017 ... According to FEMA’s After-Action Report, the agency requires 6,630 staff to respond to what it calls a “Level 1” disaster, the most serious type of incident, and its plans call for it to handle two Level 1 disasters in a single year. *Between 1997 and 2014, FEMA had a total of ten Level 1 disasters. In 2017 it had five Level 1 disaster operations underway simultaneously in Texas, Florida, California, Puerto Rico, and the U.S. Virgin Islands. The agency quickly found itself without the capacity to respond adequately to Hurricane Maria and was shorthanded in the other disaster zones as well.* In none of the five disaster operations did FEMA staff deployments reach the [Level 1] target of 6,630 staff. *As Harvey, Irma, and*

¹⁹⁸⁰ <https://www.dhs.gov/news/2018/04/11/written-testimony-fema-house-energy-and-commerce-subcommittee-oversight-and>

*María made landfall between August 25 and September 20, progressively fewer FEMA staff were available to deploy. Staff also had to be redeployed from one disaster to the next (emphasis added).*¹⁹⁸¹

FEMA's Joint statement to the Commission raised similar issues:

Responders faced numerous challenges—such as complex logistics for supplies due to distances from the mainland, and the need to provide several services due to widespread devastation and loss of power and communications infrastructure and capabilities. *The extent of this damage also limited access to survivors until access routes and communications lines could be established. Given Puerto Rico's and the U.S. Virgin Islands' remote distance from the U.S. mainland, FEMA faced challenges in getting key personnel and resources to the territories before and after the hurricanes made landfall, and with distributing those resources to survivors (emphasis added). (See page 5 of the Joint FEMA statement.)*

As GAO noted in its September 2018 report, major factors that impacted the response to María at every level included:

- 100 percent of Puerto Rico's government-run power company customers were without electricity including government offices and facilities.
- 80 percent of the government-run power company's infrastructure was destroyed.
- 80 percent of water and sewer customers were left without service.
- 80 to 85 percent of communications towers were left inoperable resulting in an almost 100 percent loss of communication – thus resulting in an inability to gain situational awareness of where the damage and humanitarian needs were most pressing.
- Large numbers of roads were blocked by landslides and several dozen bridges had collapsed.
- Maritime ports and airports were closed completely for a least 5 days after María hit.
- While ample fuel was available, there were not enough drivers or fuel tankers to deliver it even to the areas where roads had not been blocked by landslides or bridge collapses.¹⁹⁸²

State and local governments are usually the first responders, rescuers, power restorers, debris removers, and distributors of emergency supplies (with FEMA acting as the supplier) during a disaster. It bears mentioning that the production and distribution of power at the time was wholly within the control of the government of Puerto Rico. The island was 100 percent public power. In other words, the power supply, including preparations to protect it in the face of a hurricane, was within the ultimate control of the political branches of the Puerto Rican government.

¹⁹⁸¹ <https://www.nrdc.org/experts/rob-moore/maria-exposed-problems-us-disaster-policy>

¹⁹⁸² GAO, 2017 *Hurricanes and Wildfires: Initial Observations on the Federal Response and Key Recovery Challenges*, Sept. 2018, p. 29, <https://www.gao.gov/assets/gao-18-472.pdf>.

Many of Puerto Rico’s first responders, commodity distributors, power supply technicians, and local officials were themselves victims of Maria. As a result, FEMA had to step up as the first responder to the disaster in Puerto Rico to take on the role of rescuing the injured, restoring power, removing debris, distributing supplies, and more – activities which FEMA did not have to do in Houston.

As FEMA’s Joint written testimony to the Commission noted:

Limited preparedness by the U.S. Virgin Islands and Puerto Rico for a Category 5 hurricane and incapacitation of local response functions due to widespread devastation and loss of power and communications led FEMA to assume response functions that territories would usually perform themselves. According to the National Disaster Recovery Framework, local governments have the primary role in preparing for and managing the response and recovery of their communities, including leading pre-disaster recovery and mitigation planning efforts. However, FEMA essentially served as the first responder in the early response efforts in Puerto Rico. *FEMA officials noted that many services they provided—such as power restoration, debris removal, and commodity distribution—are typically provided by territorial or local governments* (emphasis added). (See page 11 of the Joint FEMA statement.)

This “limited preparedness” occurred on a watch that was wholly within the control of the Puerto Rican government, not some far-away political appointee in the Trump administration. This failure to prepare had nothing to do with Trump, or racism, or FEMA policy. It had to do with homegrown failures. This Commission should not lend a hand in obscuring rightful local blame for failure to prepare for a disaster within numerous entities – whether public power or territorial disaster relief plans.

FEMA’s Joint statement noted further that:

The conditions in Puerto Rico following Hurricane Maria required FEMA to deviate from the logistics model for commodity delivery and distribution. Initially, FEMA faced challenges in moving commodities from ports to other locations. Between the limited FEMA logistics personnel on the island and local contractors—who were also disaster survivors—the Agency could not find enough truck drivers to transport commodities. This issue, coupled with impassable roads, caused delivery delays.” ... FEMA found alternative methods ... to move food and water to Puerto Rico Regional Staging Areas (RSAs). *At the RSAs, commodities were turned over to the Puerto Rico National guard for further coordination with, and distribution to, the 78 Puerto Rico municipalities* (emphasis added). (See page 7 of the Joint FEMA statement.)

As a result, FEMA had to call on the United States Department of Defense to deliver food, water and fuel to the island by air and ship, and then by helicopter and air drops (beginning three days

after landfall) directly to survivors. DOD also removed debris and ultimately installed almost 2000 generators to restore some power. A DOD News article announced October 13, 2017 that 13,700 DOD personnel were then responding to the Maria relief effort in Puerto Rico and the Virgin Islands, three weeks after landfall.¹⁹⁸³ Indeed, the Trump administration should be commended for adapting and improvising emergency solutions to the astounding problems faced on the ground, 1000 miles away from the American mainland.

The Trump administration's solution of sending DOD staff to do what local resources normally would do, but didn't, created another set of difficulties. As FEMA's Joint Statement added:

In addition to finding temporary housing for disaster survivors given the extensive damage to available housing in each location, *locating accommodations for the nearly 15,000 government employees – including military personnel – deployed to assist in response activities became a major challenge* (emphasis added). (See page 11 of the Joint FEMA statement.)

Timing and Logistical Challenges

Despite the unprecedented challenges faced by FEMA in responding to Maria 1,000 miles from the U.S. mainland, the Commission's Report focuses on three statistics – all of which were influenced by the severity of Maria's devastation – to support the incorrect view that FEMA's material and logistics response effort on the island was inferior to that for Hurricane Harvey:

- Total personnel deployed in each jurisdiction 9 days and 30 days after landfall.
- The amount of water and meals delivered within 9 days after landfall in each place.
- The number of tarps delivered within 9 days after landfall in each place. (See pages 166-167 of the Report.)

Don't forget, there were 7.6 million people impacted by Hurricane Harvey, twice as many as the 3.8 million impacted by Hurricane Maria (3.8 million).¹⁹⁸⁴ The selection of the 9-day time frame from landfall is curious since multiple sources reported or testified to the Commission about the many challenges unique to Hurricane Maria that had prolonged its emergency response timelines. Put another way, it was easier to get to Houston than it was to Puerto Rico after the storms.

When considering this issue, there is some utility to consulting a map. Salt water oceans surround Puerto Rico for hundreds of miles until you reach a port on the United States mainland.

¹⁹⁸³ <https://www.defense.gov/News/News-Stories/Article/Article/1342307/13700-dod-personnel-respond-to-hurricane-maria-relief-effort/>

¹⁹⁸⁴ *Santos v. Fed. Emergency Mgmt. Agency*, 327 F. Supp. 3d 328, 333 (D. Mass. 2018), cited in footnote 270 on page 37 of the Report.

In contrast, Interstates 10, 45, and 69 flow into Houston from every direction except from the southeast. Puerto Rico has only two airports with runways longer than 6,000 feet on the entire island. Houston alone has at least three airports to land supplies and personnel.

The very article that the Report relies on (for its 9-day statistics) notes the extreme transportation challenges in getting supplies to Puerto Rico. It quotes Michael Byrne (the FEMA federal coordinating officer in Puerto Rico for Maria) as saying:

We had problems getting everything. *When you have to ship it, when you have to add 7 days or something longer to everything that you want to bring in ... it's definitely a challenge* (emphasis added).

In light of the many difficulties posed by the unprecedented devastation (including closure of Puerto Rico's ports and airports for 5 days after landfall) and the distance from the mainland to Puerto Rico (requiring seven days of maritime shipping time even under normal conditions) vs. Houston being reachable by land via Interstate highways and other roads, it is clear FEMA would fail under any standard or metric using a 9-day timeline from landfall.

The Report itself detailed as much on pages 190-191:

FEMA noted that the physical distance ... from the U.S. mainland had a significant impact on FEMA's ability to deliver resources to the Island, and that conditions on the ground in Puerto Rico required FEMA "to deviate from the logistics model for commodity delivery and distribution. ... *Comparatively, when Harvey in Texas flooded major roads, FEMA could find alternative land routes to deliver resources to the disaster zone, whereas FEMA was unable to use alternate routes in the case of María because every maritime port and airport was closed in Puerto Rico after landfall. Additionally, FEMA had difficulty moving goods within and around the Island as FEMA's contract truck drivers in Puerto Rico were also disaster survivors themselves* (emphasis added).

Remember, Maria came just after another hurricane hit Puerto Rico. This goes a long way toward explaining the circumstances following Maria's landfall – at least to reasonable observers. The Report, citing FEMA's "2017 Hurricane After-Action Report," notes on page 172 that FEMA had depleted its emergency supplies warehoused in Puerto Rico as part of its response to Hurricane Irma less than two weeks before Maria hit:

FEMA faced additional unique struggles when providing recovery aid in Puerto Rico. María landed in Puerto Rico before the water, tarps, and cots at FEMA's Caribbean Distribution Center warehouse had been replenished. The Caribbean Distribution Center was the only emergency stockpile in the region and is located in Puerto Rico. *When María hit, 83 percent of all the items, including 90 percent of the water, and all the cots and tarps, had been deployed after Irma hit the U.S. and the Virgin Islands* (emphasis added).

The minority on the Senate Homeland Security and Government Affairs Committee in its April 10, 2018 oversight report titled “Failures in FEMA Contracting for Emergency Tarps & Sheeting During the 2017 Hurricane Season” made a similar observation:

At the start of the 2017 Hurricane Season, FEMA had 110,000 units of plastic sheeting, and 424,331 units of blue tarps located at the FEMA distribution centers. Much of this inventory was exhausted during the initial responses to Hurricane Harvey and Hurricane Irma, leaving limited supplies to address the devastation of Maria. In addition to problems with depletion of emergency supplies at FEMA distribution centers, response efforts to Hurricane Maria were further impacted by logistical challenges such as shortages of trucks and drivers to distribute items, a shortage of contractors to perform the necessary repairs, and difficulties obtaining required authorization from homeowners (emphasis added).¹⁹⁸⁵

As to staffing levels in Puerto Rico, Chris Currie, Director of Homeland Security and Justice Issues at GAO, stated in his written testimony to the Commission on June 25, 2021:

Under typical disaster operations, responders are moved to the disaster response area via commercial travel options – or as in Texas and Florida, on roadways from nearby states, according to FEMA officials. However, limitations on air travel due to capacity constraints and power outages meant that FEMA had to coordinate and mobilize agency partners to provide chartered air transportation until commercial travel options resumed (emphasis added). (See page 4 of his testimony.)

Jeffrey Byard, the former Associate Administrator in FEMA’s Office of Response and Recovery, in testimony to the House Energy and Commerce Committee’s Subcommittee on Oversight and Investigations on April 11, 2018 stated that:

One day after Maria made landfall in Puerto Rico, there were already more than 3,500 federal staff on the ground in Puerto Rico and the USVI supporting response and recovery operations.... By September 29, there were more than 10,000 federal staff (including more than 800 FEMA personnel) on the ground in Puerto Rico and the USVI, working around the clock with territorial and local officials to stabilize the situation. (See page 4 of his testimony.)¹⁹⁸⁶

FEMA’s Joint Statement to the Commission states:

¹⁹⁸⁵ <https://www.hsgac.senate.gov/imo/media/doc/Government%20Oversight%20-%20Failures%20in%20FEMA%20Contracting%20for%20Emergency%20Tarps%20and%20Sheeting%20During%20the%202017%20Hurricane%20Season.pdf>

¹⁹⁸⁶ <https://www.dhs.gov/news/2018/04/11/written-testimony-fema-house-energy-and-commerce-subcommittee-oversight-and>

At the height of the response to Hurricanes Harvey, Irma, Maria and California wildfires, FEMA upscaled response operations, quintupling the number of incident management (IM) staff in the field within 60 days of Hurricane Harvey's landfall, expanding from 2,800 to 10,400 deployed staff. To supplement Agency staff, FEMA requested the activation of the Department of Homeland Security (DHS) Surge Capacity Force (SCF) that ultimately provided over 3,000 additional staff to the field for 2017 response operations. (*See page 11.*)

Perhaps Tevi Troy's observations in his written testimony to the Commission on June 25, 2021 sum it up best and thus bear quoting at length:

... the question arises of why the Harvey response was such a success, and the Maria response, just a short time later, was seen as subpar. *One of the primary reasons for this disparity is the added challenge of disaster response off the mainland. Getting resources to an island is just that much more difficult than using the interstate highway system to move people and supplies.* As a FEMA official told me, "To say it's logistically challenging is an understatement.

This logistical challenge was compounded by the devastation on the island. The first responders in Puerto Rico were also the victims, which means that many were unavailable to the response effort. The result is that FEMA faced both its normal job of transporting supplies but also the typically local responsibility of distributing them, which is not its expertise.

In addition, it is harder for the residents themselves to evacuate when planes and boats are the only avenues of escape. We saw the lines of cars on interstate 95 headed north from Florida before Irma. Such an escape route was not available to Puerto Ricans or Virgin Islanders. At the same time, this hurdle made it that much harder for the Good Samaritans to assist. Dallas' "Texas Kosher BBQ" brought badly needed kosher food to observant Jewish Houstonians who had been subsisting on Chex Mix. Dallas is 239 miles from Houston. Puerto Rico is only 110 miles across, and the Virgin Islands even smaller, limiting the geographic range from which help could come.

He goes on to address the compounding effects of serial disasters on response times:

A second reason for the difference in responses stems from the challenge of coping with serial disasters. As we saw with Harvey and Irma, post-Katrina reforms in 2006 improved FEMA's "surge capacity," its ability to handle more than one disaster in a row or at a time. But Texas and Florida happen to be two of the best prepared emergency response states, which made the job easier. Puerto Rico is less well-equipped. Furthermore, FEMA, like any government agency, has limited resources. Its appropriations run out quickly in one disaster, let alone three, requiring a less than nimble Congress to vote to provide disaster funding. *And FEMA personnel, who do heroic work, are only human and*

subject to exhaustion when faced with a month of constant deployments and redeployments.”

Troy then notes the impact of María’s island-wide power and communications disruption making situational awareness and operational planning difficult to achieve in the immediate aftermath of the disaster:

[O]ne of the critical challenges in the hours and days following María's landfall was a lack of situational awareness. Because María was so powerful when it made landfall, it destroyed the existing power and communications infrastructure on the island. This put FEMA at an immediate disadvantage in its attempts to respond to the crisis. I mentioned needed and welcome improvements in the FEMA operations centers earlier. In the María situation, those operations centers were less effective without power and communications connectivity (emphasis added). (See page 4 of Troy's written testimony.)

Assistance Request Processing and Funding

The Report in the charts from pages 161-170 also questions whether requests for assistance were approved as quickly and at the same pace, as well as whether the overall amount of assistance per applicant in Puerto Rico was on par, with that provided in Houston. I would again note that Hurricane Harvey impacted twice as many residents (7.6 million) as María (3.8 million).

The chart on page 164 shows that 1,122,627 residents applied for aid in Puerto Rico whereas Houston, with twice the population, had only 895,938 residents apply for aid. The chart also shows that the amount of assistance paid per applicant for the Individual and Household Program (IHP) was \$4,440 on average in Houston and \$2,812 in Puerto Rico. The average amount per applicant under the Housing Assistance (HA) program was \$7,203.67 and \$3,321 respectively. As noted on page 126 of the Report, the average repair in Puerto Rico cost \$3,643.09 and the average rent was \$2,956.17. The average rent paid in Houston was \$6,461.

While the Report implies the differences in amounts showed bias against Puerto Rico applicants, Houston’s over \$60,000 median income compared to Puerto Rico’s under \$20,000 median income¹⁹⁸⁷ means that home repairs and rent are more expensive in Houston than in Puerto Rico. The chart itself bears this out since it shows that the average rent amount of \$2,956.17 in Puerto Rico is less than half of the \$6,461 average rental amount in Houston.

The Report on page 170 has a chart showing that it took longer for applicants to receive final decisions, first awards of funding, and first inspections – sometimes double the number of days in Puerto Rico than in Houston, again with the implication being that FEMA acted with bias in

¹⁹⁸⁷ <https://www.census.gov/content/dam/Census/library/publications/2018/acs/acsbr17-01.pdf>

regard to Puerto Rico. But again, the many logistical and infrastructure problems affecting things like electricity, transportation, communications, deployment, staffing and quartering that plagued FEMA's initial emergency disaster response (like the lack of stable power on much of the island for many months) also plagued FEMA's application processing efforts long after landfall.

On page 165, the Report includes a chart showing the total IHP dollars obligated for Harvey (as of June 2021) was \$1,656,898,380.50 while Puerto Rico received \$1,336,691,217.55 in total IHP funding – or just \$320 million less than Houston even though Houston had twice the number of impacted people. Even more amazing is that the chart shows that Puerto Rico received over \$27.5 billion in Public Assistance (PA) funding for Maria while Houston received a little over \$2.5 billion in PA funds. In other words, Houston with twice the population got less than 10% of what Puerto Rico received in PA funds.

The Report immediately skips over this huge difference in funding in Puerto Rico's favor with critiques about aid being more swiftly available for Harvey than for Maria, about delays in the delivery of supplies, and the smaller number of personnel deployed 9 days and then 30 days after landfall for Maria than Harvey – implying it was all due to racial bias instead of the conditions on the ground as repeatedly explained to the Commission.

In doing so, the Commission Report undermines itself. The Commission does its best work when it examines real problems actually associated with race. Indeed, some members of the Commission have been urging the Commission to examine the recent chaos and bloodshed in communities across the nation caused by an increase in crime. Civil rights mean nothing if you can't walk down your street. So, the Commission undermines its own work when it seeks out racial motivations when other more obvious causes of a problem are in plain sight. The Report provides, in my view, an egregious effort to find racial animus when the real reasons behind the outcome were in plain sight all along.

Federal Court Has Rejected Arguments in the Report

Federal courts have supported the logic in this dissent. The Report itself says on page 144 that a federal judge dismissed a case against FEMA, “agreeing with the defendants’ argument that the plaintiffs had failed to allege sufficient facts to prove that FEMA intentionally discriminated against Puerto Ricans in FEMA’s response to María.”¹⁹⁸⁸ In another case, some Maria survivors who evacuated to the United States sued FEMA to continue receiving Transitional Sheltering Assistance (TSA) past FEMA’s announced deadline of June 30, 2018 for providing such

¹⁹⁸⁸ Order Dismissing Case, *Asencio v. Federal Emergency Mgmt. Agency*, 4:18-cv-40111, ECF No. 69 (Sept. 20, 2018) (granting Defendants’ Motion to Dismiss for the reasons stated in Defendants’ memorandum, supporting the motion to dismiss); *See*, Memorandum in Support of Defendants’ Motion to Dismiss, *Asencio*, 4:18-cv-40111, ECF No. 66 *2-3, 14-19.

assistance to victims of María. Their suit, in part, was based on allegations that as residents of Puerto Rico they were receiving unequal treatment from FEMA compared to Hurricane Harvey victims. FEMA had allegedly provided over 22 times the amount of TSA financial assistance to victims of Harvey as it had in the same timeframe for victims of María.¹⁹⁸⁹

The federal court, in rejecting the plaintiffs request for a preliminary injunction based on Equal Protection and Discrimination claims, found that:

Plaintiffs have cited to what they claim are “stark differences” in FEMA’s treatment of victims of Hurricanes Harvey and Irma versus its treatment of Puerto Rican victims of Hurricane Maria ... Plaintiffs do acknowledge, but then downplay the fact that there were twice as many people impacted by Hurricane Harvey (7.6 million) than were impacted by Hurricane Maria (3.8 million), and over six times as many people were affected by Hurricane Irma (19.3 million). Moreover, as pointed out by FEMA, every disaster is unique and requires different responses. For example, Hurricanes Harvey and Irma hit the mainland, while Hurricane Maria hit Puerto Rico, which is an island and is more logistically difficult to reach and assess. FEMA also points out that the damage sustained in each hurricane varied: Hurricane Harvey caused mostly flooding damage while Hurricane Maria caused mostly wind damage. These are only some differences which undermine Plaintiffs’ equal protection claim—Defendants’ Supplemental Brief (Docket No. 56) details many more. Simply put, as the record currently stands, Plaintiffs have failed to make out a viable equal protection claim because they have not established either that they were similarly situated to other hurricane victims, and even if they were, that they were treated differently. Therefore, I find that they are unable to establish a likelihood of success on the merits with respect to their Equal Protection Clause claim. ...

Given the differences in the disasters, including the number of people and the amount of property affected, the type of damage and the logistical differences in the locations where the hurricanes hit, I have grave concerns that the Plaintiffs have made out a prima facie case, despite the low threshold for doing so. Assuming they have, FEMA has rebutted their claims by providing detailed evidence regarding the scope of damage caused by Hurricanes Harvey and [Irma] versus the scope of the damage to Puerto Rico, the difference in the type of damage, the difference in the number of persons affected and the logistical difficulties as the result of Puerto Rico being an island located well off the United States mainland. FEMA has also provided a breakdown of the amount of financial assistance given to Texas (Harvey), Florida (Irma) and Puerto Rico (Maria), which establish that aid to Puerto Rico has been in line with the aid provided to Texas and Florida.¹⁹⁹⁰ ...

¹⁹⁸⁹ *Santos v. Fed. Emergency Mgmt. Agency*, 327 F. Supp. 3d 328, 333 (D. Mass. 2018).

¹⁹⁹⁰ *Id.* at 11-12.

The court understood a point this Report seems to miss about most of FEMA's alleged deficiencies in its response to Hurricane Maria in Puerto Rico. The timing of events, geographic limitations, conditions on the ground and sea, human limitations, and other objectively reasonable factors were the basis for any delay or perceived shortfall in FEMA's response to Maria – not any prejudice or deliberate intent to discriminate against Puerto Rico or its people.

Puerto Rico's "Informal Housing" Practices

Another issue branded as evidence of racial discrimination in the Report is FEMA's requirement that applicants for homeowner assistance "jump through hoops" to prove they actually owned and occupied the homes for which they are seeking disaster relief.

This is shocking stuff, except to anyone who has ever obtained homeowners insurance or had to establish for one reason or another that they actually owned a piece of property.

Here the Report approaches the ridiculous. Just ask American taxpayers if they want taxpayer funded FEMA benefits going to recipients who cannot even show they own the property. We all know what the vast majority of taxpayers would think.

Ask taxpayers if they want their taxpayer-funded FEMA benefits going to home rehabilitation projects for hurricane victims that would result in the homes vastly exceeding the original quality and value of the property before it was damaged. Hurricanes, at least to most taxpayers, should not be opportunities for aid recipients to "upgrade" their housing courtesy of the taxpayers. It is not evidence of racial animus for taxpayers to expect some credible proof of ownership before those taxpayers spend millions to fund repairs and replacement of property.

To that end, FEMA has requirements in the United States, legislated by Congress, in order to protect U.S. taxpayers from waste, fraud and abuse. The report mentions several times that around 55 percent of homeowners in Puerto Rico did not have documented proof of homeownership when Maria hit. As the Report highlights on page 13:

In Puerto Rico, it is estimated that as many as 55 percent of homeowners did not hold a title at the time of Hurricane María, and at least 77,000 applicants were denied FEMA assistance due to title documentation issues. These denials were based on FEMA's interpretation of a Stafford Act requirement that assistance be limited to "owner-occupied" residences; however, nothing in Puerto Rico's laws or regulations require homeowners to register their properties. ... Following the work of many community advocates, in September 2021, FEMA adapted its policies to make it easier for disaster survivors to prove ownership and occupancy of damaged primary residences.

Then citing a RAND Corporation analysis titled "*Hurricanes Irma and María: Impact and Aftermath*" and other experts, the Report on page 28 states:

While homeownership is generally high in the territory, mortgages are less common than in other areas of the United States, and a substantial number of residential housing structures are part of an informal housing sector. *Many of these homes were built without approved engineering or architectural plans, resulting in construction that fell short of building codes. Further, residents often do not have a registered title to the land the structures are on, further complicating recovery efforts.* A 2007 study commissioned by the Association of Home Builders of Puerto Rico found that *55 percent of residential and commercial construction was informal, or constructed without building permits or following land use codes. This type of construction is common in all parts of Puerto Rico, often going back generations. A local planner indicated that “[t]here are hundreds of thousands of homes in the island built informally, with no permits and [that] are not up to code. Some of that informality is of people that do not have a title”* (emphasis added).

As an aside, while the reader contemplates this “informal housing sector” described in great detail below, one is struck at how problematic this “informal housing sector” is for a myriad of other property and commercial related issues.

Should taxpayers in places like Tulsa, Kenosha and Allentown be required to financially support this “informal housing sector” by ignoring the Stafford Act requirements designed to protect taxpayers, especially when bona fide residents of Puerto Rico do not themselves pay federal income taxes?

If any long-term relationship is to continue between the United States and Puerto Rico (e.g., Statehood or territorial status), should incentives exist to evolve away from support of the island’s “informal housing sector” so more efficient and proper deployment of disaster relief can follow?

Will some factions simply ignore the consequences of this “informal housing sector” and instead view it as an anomaly that deserves American taxpayer subsidy and support? These are political questions, and it isn’t too hard to imagine where the overwhelming majority of Americans would fall in deciding them.

One insight into the scale and causes of the so-called “informal housing sector” that confronted FEMA in Puerto Rico after Maria – in regard to eligibility for assistance and proof of ownership – comes from a February 6, 2018 Special Report from Reuters titled, *“In Puerto Rico, a housing crisis U.S. storm aid won’t solve.”*¹⁹⁹¹ The article reviews the post-Maria plight of what the article calls a 6,000-person “illegal shantytown” called Villa Hugo, that emerged on *public wetlands* near the El Yunque National Forest over 30 years ago – after the devastation wrought by Hurricane Hugo left thousands homeless in 1989. It is worth quoting at extraordinary length:

¹⁹⁹¹ <https://www.reuters.com/article/us-usa-puertorico-housing-specialreport-idUSKBN1FQ211>

About 6,000 squatters ... built makeshift homes on 40 acres that span a low-lying valley and its adjacent mountainside. Wood and concrete dwellings, their facades scrawled with invented addresses, sit on cinder blocks. After Maria, many are missing roofs; some have collapsed altogether.

Villa Hugo reflects a much larger crisis in this impoverished U.S. territory, where so-called "informal" homes are estimated to house about half the population of 3.4 million. Some residents built on land they never owned. Others illegally subdivided properties, often so family members could build on their lots.

Most have no title to their homes, which are constructed without permits and usually not up to building codes. The houses range in quality and size, from one-room shacks to sizable family homes. Many have plumbing and power, though not always through official means.

The concentration of illegal housing presents a vexing dilemma for local and federal authorities already overwhelmed by the task of rebuilding an economically depressed island after its worst natural disaster in nine decades. ...

But rebuilding to modern standards or relocating squatters to new homes would take an investment far beyond reimbursing residents for lost property value. It's an outlay Puerto Rico's government says it can't afford, and which U.S. officials say is beyond the scope of their funding and mission.

Yet the alternative - as Villa Hugo shows - is to encourage rebuilding of the kind of substandard housing that made the island so vulnerable to Maria in the first place. "It's definitely a housing crisis," said Fernando Gil, Puerto Rico's housing secretary. "It was already out there before, and the hurricane exacerbates it.

In Puerto Rico, housing is by far the largest category of storm destruction, estimated by the island government at about \$37 billion, with only a small portion covered by insurance. That's more than twice the government's estimate for catastrophic electric grid damage, which was made far worse by the shoddy state of utility infrastructure before the storm. ...

Maria destroyed or significantly damaged more than a third of about 1.2 million occupied homes on the island, the government estimates. Most of those victims had no hazard insurance - which is only required for mortgage-holders in Puerto Rico - and no flood insurance. Just 344,000 homes on the island have mortgages, according to U.S. Census Bureau data.

Officials at the U.S. Federal Emergency Management Agency (FEMA) and the Small Business Administration (SBA) acknowledged the unique challenges of delivering critical housing aid to Puerto Rico. Among them: calculating the damage to illegal, often substandard homes. ...

Governor Rosselló is seeking \$46 billion in aid from HUD, an amount that dwarfs previous allocations for even the most destructive U.S. storms. That's nearly half the island's total relief request of \$94 billion. ...

The island's housing crisis long predated the storm. According to Federal Housing Finance Agency data, Puerto Rico's index of new home prices fell 25 percent over the last decade, amid a severe recession that culminated last May in the largest government bankruptcy filing in U.S. history. *Legal home construction, meanwhile, plummeted from nearly 16,000 new units in 2004 to less than 2,500 last year*, according to consultancy Estudios Tecnicos, an economic data firm. ...

Generations of Puerto Rican governments never made serious efforts to enforce building codes to stop new illegal housing, current and former island officials said in interviews. Past administrations had little political or economic incentive to force people out of neighborhoods like Villa Hugo. ...

The task of rebuilding Puerto Rico's housing stock ultimately falls to the territory government, which has no ability to pay for it after racking up \$120 billion in bond and pension debt in the years before the storm. That leaves the island dependent on U.S. relief from FEMA, the SBA and HUD. ...

FEMA's cap for disaster aid to individuals is \$33,300, and actual awards are often much lower. Normally, FEMA eligibility for housing aid requires proving property ownership, but the agency says it will help owners of informal homes if they can prove residency.

How exactly to help gets complicated. For example, someone who builds their own home with no permits on land they own is more likely to be treated as a homeowner, said Justo Hernandez, FEMA's deputy federal coordinating officer. Squatters who built on land they didn't own, however, would likely only be given money to cover lost items and relocate to a rental, he said.

Several Villa Hugo residents said they received money from FEMA, but many didn't know what it was for and complained it wasn't enough. ...

FEMA does not police illegal building. Code enforcement is left to the same local authorities who have allowed illegal construction to persist for years. ...

Before the storm hit, Puerto Rico already had about 330,000 vacant homes, according to Census Bureau 2016 estimates, resulting from years of population decline as citizens migrated to the mainland United States and elsewhere. ...

Puerto Rico and federal officials have considered rehabilitating the vacant housing for short- and long-term use, along with building new homes and buying out homeowners in *illegally built neighborhoods*, according to Gil and federal officials. ... *The cost of constructing enough new, code-compliant properties to house people displaced by Maria*

could far exceed the available federal aid. Making them affordable also presents a problem. ...

Gil [Puerto Rico's Housing Secretary] offered little detail on a solution beyond saying it will include a mix of new development, buyout programs for owners of illegally built homes and other options. *The answer will come down to how much Washington is willing to pay, he said.*

He invoked the island's territorial status and colonial history as a root cause of its poor infrastructure and housing stock before the storm. "It is precisely because we have been neglected by the federal government that the island's infrastructure is so weak," he said.

Many Puerto Rico officials continue to advocate for bringing relief and legitimacy to squatter communities like Villa Hugo, rather than trying to relocate their residents. Canovanas Mayor Lornna Soto has been negotiating with island officials to provide property titles to Villa Hugo's population. The vast majority still don't have them.

"It's long overdue to recognize that they are not going anywhere and their communities need to be rebuilt with proper services," Soto said (emphasis added).

In sum, this "informal housing sector" is making matters worse. I may have voted in favor of the Report had it recognized the problems it creates rather than find evidence of racial discrimination whenever the curiosities of the "informal housing sector" clash with FEMA aid application requirements. I may have voted for the Report had it recommended that the Puerto Rican government address the terrible problems caused by this "informal housing sector," including the very ability to withstand a natural disaster and provide a system of clarity of title to govern and promote a more efficient system of property law and a better quality of housing construction.

Instead, in the Report, any clash of this "informal housing sector" with centuries-old principles of property law familiar on the mainland (and throughout most of the world) is converted into evidence of racial animus. Nonsense. It is foolish and reckless to call the clash between "informal housing" rules and centuries-old systems of title recording and ownership evidence of racial animus in the approach to disaster relief.

Again, ask the millions of taxpayers which side they fall on here.

More disgraceful, this "informal housing sector" is contributing to the very misery that the Report seeks to address. People are living in substandard housing because the rules of the "informal housing sector" are just that, informal. It's time for the responsible legislators and officials on Puerto Rico to strongly consider laws and structures that have existed the world over for centuries to mitigate against problems caused by "informal housing sectors" – problems revealed acutely by natural disasters.

Systems of property law used for 350 years in the United States promote and encourage property ownership. “Informal housing sectors” promote poverty and housing uncertainty.

Efficient systems of property transfer and recording promote investment, care and attention to land and structures. “Informal housing sectors” discourage investment and efficient transactional systems and encourage shelter less likely to withstand storms.

The Report unfortunately seems to lack the economic literacy to understand that the difference between the two systems has a direct impact on the ability of a region to recover from a natural disaster wholly apart from bureaucratic requirements to fill out forms a certain way. Maintaining “informal housing sectors” hurts those living in them.

The differences between the two property systems is not a “lack of cultural competency.” Again, ask the Americans who pay income tax if they want to fund home repairs for structures where the owners cannot establish that they own them. Ask those taxpayers if their hard-earned dollars should go toward a disaster relief program that dispenses with the basic safeguards imposed by Congress to protect federal funds. Would those taxpayers support “informal housing sector” exemptions that dispense with proof of ownership, habitability obligations, and compliance with building codes for disaster relief – on the basis that Puerto Rico for decades has not enforced its own building codes, its health and safety requirements, or enforced laws protecting public and private property from squatters in its housing and public land sectors?

Most readers already know the answer.

Political Status: The Real Elephant in the Room

Political status is the real issue here, not racial animus. On this point, the Report misses the mark. When governments are instituted to govern people who have little or no input into the process, bad things happen. Americans fought a revolution over the issue of representation. Indeed, most of the witnesses I asked agreed that political status was the big issue affecting disaster recovery. Until status is resolved, problems will keep occurring, no matter what the topic apart from natural disasters.

Statehood, independence, status quo or free association are the four general options for status. The status quo disconnects FEMA and the entire federal bureaucracy from the people of Puerto Rico. Governments are not as responsive to those that are not constituents, no matter their race. That is a fundamental axiom of politics and government as old as time. It also helps to explain what happened after Maria.

Instead, the Report makes imaginary racial animus or phantom biases of the Trump administration into the cause of any failure or shortcoming, revealing another fundamental axiom

of modern American politics – some find it easier to blame racism or President Donald Trump than to ask the harder more serious questions. In this, the Report failed.

The witnesses regularly agreed that political status is central to the post-Maria disaster response. They testified that many of the problems in receiving federal aid were the result of being a “colony” of the United States. As one witness summarized it:

[T]he lack of access to adequate aid in this particular geography must be understood as a form of ethnic discrimination rooted in the United States’ colonial history and imperial presence (emphasis added). (See page 125 of the Dec. 10, 2021 hearing transcript.)

I then asked the panel if the problems with FEMA’s response were interwoven with Puerto Rico’s political status, and whether independence from the United States would have made the situation better or worse. The same witness as above agreed with the first part, stating:

A lack of democracy is at the core of everything that Puerto Rico has gone through and is going through. ... [Y]es, of course the colonial conditions are imbedded (sic) in everything that’s going on. ... PROMESA [the control board created by Congress to oversee the island’s \$70 billion government bankruptcy], the imposition of an unelected board that is basically deciding over fiscal policy, and that’s making the decision of who gets to stay in our land. ... Colonialism not only takes that away from us, but we are invisible. ... [T]he U.S. and the local government that has been complicit of the colonialism status, has to repair – to provide reparations for the people who are currently asking themselves – ourselves, every single day if a future in Puerto Rico is even possible (emphasis added). (See pages 156-158 of the Dec. 10, 2021 hearing transcript.)

The witness is right: political status is at the core of what happened after Maria. When hurricanes hit Hawaii, four things are different in Hawaii than in Puerto Rico: two members of the House are elected from Hawaii along with two United States Senators. Nobody could credibly argue that the response to Maria would not have been different had Puerto Rico enjoyed the same circumstances.

Another witness then answered:

... [S]o issues related to gender justice, racial justice, they need to also be thought about in terms of colonial injustice ... we have to understand how FEMA’s response is not just discriminatory, but actually leading to a lack of justice for these communities. And so it has hardened the divisions of race, gender, class, and colonialism in Puerto Rico.” (See pages 159-160 of the Dec. 10, 2021 hearing transcript.)

Such animosity in regard to Puerto Rico’s relationship with the U.S. government and against Puerto Rico’s own locally elected government leads one to wonder whether *any* level of response

to María by FEMA would satisfy the federal and local governments' critics on the island given the political status of the territory.

Imagine the response to María under the three other status possibilities. As I noted before, if Puerto Rico was a state, the response would have most certainly been better. But what if Puerto Rico was fully independent? Would the response of the government of Puerto Rico been better than FEMA's? I asked this at the hearings but the witnesses did not directly respond to the question. The reader can reach their own conclusions.

Finally, do not read my dissent as advocacy for statehood. Indeed, separate parts of this dissent catalog other issues associated with that status option. Blaming racial animus for the performance of FEMA after María repeats a mistake so common to today's discourse: blaming racial animus when something more fundamental and obvious is to blame.

The Elusive Example of Deliberate Racial Discrimination

The Report fails to list or recount any specific instances of deliberate discrimination on FEMA's part in its response to Hurricanes Harvey and María. None. No witness could name any direct instance of racial discrimination. Again, Harvey impacted over 7.6 million people and María around 3.8 million, which resulted in 895,636 requests for assistance in Houston and 1,120,770 in Puerto Rico. (*See pages 86 and 126 of the Report respectively.*)

So, with over 2 million applications being filed, FEMA reported just 99 complaints (alleging 115 Civil Rights allegations) for Harvey and just 152 complaints (alleging 168 Civil Rights allegations) for María. FEMA reported to the Commission that all 99 Harvey allegations had been closed and all but one of the María allegations were closed. FEMA also reported that almost 25% of the Harvey allegations and 30% of the María allegations "referred to no underlying Civil Rights or discrimination authority as the survivor did not identify a protected basis." (*See Report pages 201-203.*)

As this Report states on page 203:

Despite receiving hundreds of allegations of discrimination in the aftermath of Harvey and María, FEMA closed all but one of its investigations without any findings of discrimination (emphasis added).

In closing, I dissent because the Report makes mistakes that impair the credibility of the Commission's work. In the future, I will dissent again from reports that allege that racial motivation explains behavior when something else most assuredly offers a better, more reasonable explanation. Here the unique geographic circumstances, the timing and scale of

multiple disasters, and detached political status more accurately account for any alleged shortcomings in FEMA's response to Hurricane Maria compared to Hurricane Harvey.

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Statement and Rebuttal of Commissioner Gail Heriot

Have mercy.

Those were the first words that came to my mind after reading this Report’s litany of complaints about FEMA’s performance. I’m sure mistakes were made. Mere mortals always make mistakes—especially during monumental disasters like Hurricanes Harvey, Irma, and Maria. But have mercy. Many of the things complained about in this Report weren’t mistakes at all.

I can’t help but think that this illustrates a fundamental difference between the progressive and the conservative mind. Progressives are confident in the government’s ability to solve all the world’s problems, no matter how great or small. They are so confident that when the government’s performance comes in below their inflated expectations, as it inevitably will in a disaster situation, they are inclined to be unfair to those who led the effort. By contrast, conservatives feel lucky that things didn’t come out worse.¹⁹⁹²

How else can one explain the Report’s complaint that emergency food packets distributed by FEMA were insufficiently “healthy”? According to the Report, they contained things like an applesauce snack pack, beef jerky, a pudding snack pack, a chocolate bar, and potato chips, while they should have contained “vegetables, fruits, grains, low or non-fat dairy, and a variety of protein foods, including seafood, lean meats, and poultry, eggs, beans and peas, and nuts” Report at 164.

This is remarkably naïve. When FEMA swoops into a disaster area, it’s bringing needed food to people who might otherwise go hungry. The food packets must usually be pulled out of storage since it is near impossible to enter into government contracts with food service providers to make up millions of packets fresh and quickly transport them to where they are needed, which might be hundreds if not thousands of miles away. People need food *immediately*. And it can’t be food that needs to be refrigerated or cooked. It can’t be food that easily spills, spoils, or bruises or is difficult to open.

¹⁹⁹² The problem is not just in the staff generated part of the report. The Commissioner Statements of my colleagues also show this difference in orientation. For example, Commissioner Debo Adebile begins his statement this way: “When major natural disasters occur that require a federal response, there is an expectation that the federal government will come to the aid of those affected. When disaster strikes there is also the expectation that federal assistance will be prompt” Yes, but ... have mercy. There is a reason we call these things disasters. Statement of Commissioner Debo Adebile at 255.

Commissioner Yaki’s Statement is more aggressive. He accuses the federal government of “ongoing indifference.” This is unfair to the thousands of federal employees and members of the military (including the Coast Guard) who knocked themselves out to help. Statement of Commissioner Michael Yaki at 265 n. 1922.

So beef jerky it is. Anyone with the gift of wisdom knows to say “thank you” and hope for better times.

And how else can one explain the following sentence from the Report? “Despite over one hundred languages being spoken in Houston, following Harvey’s landfall, real-time information was rarely available in languages other than English and Spanish.”¹⁹⁹³ Report at 109.

Is it really possible that anyone thinks that FEMA or any other emergency service provider could have provided *real-time* information in over a hundred languages?¹⁹⁹⁴ There are higher

¹⁹⁹³ An article in the *Washington Post* shows how even translating into Spanish can pose problems:

Translating emergency information from English to Spanish is trickier than it appears. Federal and local emergency authorities, meteorologists and the National Weather Service (NWS) are expanding efforts to communicate information in Spanish as life-threatening events, including tornadoes, hurricanes and wildfires, increasingly occur in regions across the United States with large numbers of Spanish-speaking residents. Communication is complicated, however, due to important variations among different Spanish dialects. For decades, much of the official weather information prepared in Spanish has come from Puerto Rico, where the NWS has a major office; many Spanish-speaking meteorologists have attended the Atmospheric Sciences and Meteorology Program at the University of Puerto Rico. The problem, however, is that many U.S. residents speak different Spanish dialects, depending on their countries of origin.

Kay Nolan, *¡Alerta! Variations in Spanish Dialects Complicate Emergency Messaging*, Wash. Post, July 24, 2021.

In Commissioner Adegbile’s Statement, he complains that “sign linguists sent to Puerto Rico often only knew English American Sign Language (ASL), rather than the Spanish variant used generally through the Island.” Left unsaid is how in the world FEMA could have on permanent staff speakers of every possible language and its companion sign language just in case that’s where the disaster hit in that year, or alternatively how FEMA could quickly staff up with individuals with knowledge of the Spanish variant of ASL used in Puerto Rico when the island’s communication system is not working. Statement of Commissioner Debo Adegbile at 258.

¹⁹⁹⁴ The Report’s discussion of the difficulties faced by transgender individuals in the aftermath of Maria may also fall into the category of an unavoidable problem. The Report states:

Identification verification has also shown to be problematic for some disaster survivors. It has been reported that the Puerto Rico Civil Rights Commission received at least five complaints from transgender individuals arguing that FEMA discriminated against them because their name did not match the one appearing on their government records. Ever Padilla Ruiz, a lawyer and Executive Director of the Puerto Rico Civil Rights Commission, indicated that these individuals had their names changed by a court decision, yet did not appear in the FEMA database, and that, “[w]hen they search for the Social Security number, another name shows up that is not aligned with their gender identity.” ... When discrepancies arose in personal identification verification, FEMA indicated that it supported individuals in attempting to verify identity and ownership to provide aid. In Puerto Rico, FEMA stated that it has made changes to standard documentation requirements to accommodate local circumstances and provided funding to various legal organizations to help the survivors with their application or appeals.”

Report at 148.

priorities—like rescuing people stranded on rooftops or finding a place to sleep for thousands of people whose homes are flooded (no matter what language they speak).¹⁹⁹⁵ And that’s not all. Truckloads of cots and blankets are needed—as well as some method for keeping them dry. There needs to be food and water, diapers and infant formula, towels and soap, port-a-potties and toilet paper, and toothpaste and toothbrushes. Diabetics need their insulin; individuals with hypothyroidism need Synthroid. Those with high cholesterol or high blood pressure need their medications. And don’t forget the large animals—horses and cattle—that must be rescued, the small pets that have been separated from their owners, and a thousand other tasks that are too numerous to list but too important to delay.¹⁹⁹⁶

Instead of whining about FEMA’s failure to translate into a hundred languages in real time—an impossible task—I’d rather be thankful for all those who pitched in to translate during the

These are the kinds of situations that will always come up when a federal agency is attempting to help a community dig itself out of a calamity. When the agency is being asked to commit taxpayer funds to individual who report that they have been injured, the agency has a responsibility to ensure that the individuals are who they say they are. Sometimes names won’t match up because the individual has recently been adopted or married or decided to undergo a name change for some other reason (e.g., a desire to Americanize a name). Sometimes discrepancies will occur because of a clerical error in the database. Only a small number of these discrepancies will be due to the individual’s transgender status. Unless there are facts showing that transgender individuals are being treated more harshly than other individuals who are having difficulty establishing their identity due to discrepancies in name, sex, or other identifying data, it doesn’t show discrimination.

The sad fact is that fraud is common when the government funds large emergency relief funds. See, e.g., Kyra Shportum, *Fort Myer Beach Man Pleads Guilty to Irma FEMA Fraud*, abc-7.com, December 6, 2021, <https://abc-7.com/news/crime/2021/12/03/fort-myers-beach-man-pleads-guilty-to-irma-fema-fraud/>; Dawn Burleigh, *Jefferson County Man Guilty of FEMA Fraud for Hurricane Harvey Payments*, Orange Leader, October 25, 2021, <https://www.orangeleader.com/2021/10/25/jefferson-county-man-guilty-of-fema-fraud-for-hurricane-harvey-payments/>.

The problem is by no means limited to FEMA. See Eamon Javers & Scott Zamost, *Criminals Have Stolen Nearly \$100 Billion in Covid Relief Funds, Secret Service Says*, CNBC, Dec. 21, 2021, <https://www.cnn.com/2021/12/21/criminals-have-stolen-nearly-100-billion-in-covid-relief-funds-secret-service.html>; Ken Dilanian & Laura Strickler, *“Biggest Fraud in a Generation”: The Looting of the Covid Relief Plan Known as PPP*, nbcnews.com, March 28, 2022, <https://www.nbcnews.com/politics/justice-department/biggest-fraud-generation-looting-covid-relief-program-known-ppp-n1279664>.

¹⁹⁹⁵ If you’ve ever wondered why some people are keen on making sure immigrants to the United States learn English as promptly as they can, this is certainly part of the reason.

¹⁹⁹⁶ Commissioner Kladney complains in his Statement that the Governor’s Commission to Rebuild Texas, which is about 170 pages long, mentions “pets” 11 times, but “there is no mention of how to better help those with disabilities, the elderly, or those with functional needs.” Statement of Commissioner David Kladney at 263. The report he refers to was undertaken by Texas A & M University. Its chancellor—John Sharp—headed the commission. The “A” in Texas A & M University came from Agricultural and the “M” from “Mechanical.” It has a world class program in agricultural sciences, and its veterinary science schools was recently ranked #4 in the United States. It is hardly a surprise that its report would mention both livestock and pets in a report that otherwise focuses on rebuilding. These are the areas of Texas A & M’s expertise. Other reports (including this one) have focused more on disabilities. There is room for both kinds of reports.

emergencies—whether they did so for strangers or for their relatives and friends.¹⁹⁹⁷ There must have been thousands of them. And even more who helped in other ways—sometimes to the point of risking their lives. There are millions of good neighbors among us—and a lot of outright heroes too. Bless them all.

But let me back up a little and start a little closer to the beginning of the story.

Triple Whammy

Those who lived through Hurricanes Harvey, Irma, or Maria will likely never forget the experience.¹⁹⁹⁸ All three storms occurred in quick succession. Harvey made landfall on August 25th near Port Aransas, Texas and moved up the Gulf Coast through the heavily populated Houston metropolitan area and then into parts of Louisiana. Irma first swept through parts of the Caribbean, including the U.S. Virgin Islands, brushed up close to Puerto Rico, and went on to make landfall at Cudjoe Key, Florida on September 10. From there, it devastated much of Florida and drenched parts of the Southeast before dissipating over Tennessee and Missouri on September 13. Only days later—on September 18—Maria pummeled Dominica and then, on the 19th, St. Croix in the U.S. Virgin Islands. By the 20th, it had gone on to wreak havoc on Puerto Rico.

These were no ordinary storms. Each one was the “worst ever” along some dimension. Harvey—a Category 4 storm when it first hit Texas—was the wettest storm on record in the United States.¹⁹⁹⁹ It dumped 30 to 60 inches of rain in parts of Texas, causing catastrophic flooding. Irma was a Category 5 and the strongest hurricane ever recorded by the National

¹⁹⁹⁷ Commissioner Kladney argues that I am criticizing those who advocate for hurricane victims “when they criticize the federal response.” No, I am criticizing this report when it tries to argue that FEMA should have provided real-time information in over a hundred languages. Unrealistic standards only cause the report to discredit itself. Rebuttal of Commissioner David Kladney at 350. Similarly, he tries to turn my comments about the report’s bizarre criticism of the FEMA’s emergency meals into a criticism of the individuals who received the meals. *Id.* Once more, however, his argument is misguided.

¹⁹⁹⁸ I am using “Maria,” which I believe is the proper designation, rather than “María,” to refer to the hurricane that struck Dominica, St. Croix, and Puerto Rico. I am following the example of the *New York Times*, the *Wall Street Journal*, and the *Washington Post*. Each year the World Meteorological Organization produces a list of names for tropical storm season. In 2017, the name “Maria” (not María) was selected for the 13th Atlantic storm of the season. At the time, no one knew what language would be spoken at the place where it made landfall. As it turned out the three islands hit hardest were Dominica (mostly English speaking), St. Croix (mostly English speaking) and Puerto Rico (mostly Spanish speaking).

¹⁹⁹⁹ David Schultz, *Harvey Now Officially Wettest in U.S. History*, Bloomberg Law, July 9, 2018, <https://news.bloomberglaw.com/environment-and-energy/harvey-now-officially-wettest-storm-in-us-history>.

Hurricane Center in the open Atlantic Ocean.²⁰⁰⁰ Maria—also a Category 5 during much of its rampage—was the strongest on record to make landfall on Dominica and, in Puerto Rico, wiped out the electrical grid that served over 3 million people.²⁰⁰¹

All three were killers. In Texas, 68 died as an immediate and direct result of Harvey’s wind and rain. An additional 35 “indirect” deaths were attributed to electrocution, motor vehicle accidents, and isolation from necessary medical services.²⁰⁰² The National Hurricane Center classified 7 Florida deaths as the “direct” result of Irma with an additional 80 “indirect” deaths due to a combination of falls during the preparation for Irma’s approach, vehicle accidents, carbon monoxide poisoning from generators, chainsaw accidents, electrocution, and heat exhaustion.²⁰⁰³

The official death count from Maria was originally 64.²⁰⁰⁴ But that probably understated the situation. A study by George Washington University researchers done at the behest of the Puerto Rican government found that death rates remained usually high in Puerto Rico in six-month period immediately following Maria.²⁰⁰⁵ The study reasoned that the 2975 “excess deaths” during that period could have occurred on account of Maria. This method of evaluation does not require evidence of a causal connection between an individual death and the hurricane. It relies solely on what were found to be higher-than-normal death rates during that six-month period. In the absence of an alternative explanation for the unusual rate of death, the Puerto Rican government accepted the study’s reasoning and changed the official number to 2975.²⁰⁰⁶

²⁰⁰⁰ National Weather Service, Detailed Meteorological Summary on Hurricane Irma, https://www.weather.gov/tac/Irma_technical_summary.

²⁰⁰¹ Richard J. Pasch, Andrew B. Penny & Robbie Berg, *National Hurricane Center, Tropical Cyclone Report: Hurricane Maria*, Feb. 14, 2019, at 4.

²⁰⁰² Eric S. Blake & David A. Zelinsky, *National Hurricane Center, Tropical Cyclone Report: Hurricane Harvey: August 17 – Sept 1, 2017*, May 9, 2018.

²⁰⁰³ John P. Cangialori, Andrew S. Latta, & Robbie J. Berg, *National Hurricane Center, Tropical Cyclone Report: Hurricane Irma: August 30 – September 12, 2017*, September 24, 2021 at 16.

²⁰⁰⁴ In his Rebuttal, Commissioner Kladney seems to be suggesting that I might be incorrect about this number and that perhaps it should be 65. Rebuttal of Commissioner David Kladney at 345. For what it’s worth, my sources all say 64 and not 65. See, e.g., Frances Robles, et al., *Official Death Toll 64: Actual Deaths May Be 1052*, N.Y. Times, Dec. 9, 2017, <https://www.nytimes.com/interactive/2017/12/08/us/puerto-rico-hurricane-maria-death-toll.html?mtrref=www.google.com&gwh=04F0BF15C60233F38B588DBE978539C7&gwt=regi&assetType=REGI WAL>.

²⁰⁰⁵ Milken Institute School of Public Health, George Washington University, *Project Report: Ascertainment of the Estimated Excess Mortality for Hurricane Maria in Puerto Rico*, August 28, 2018.

²⁰⁰⁶ I find this basic approach potentially revealing. But there are many pitfalls in applying it to a particular situation. For example, in the wake of Maria, Puerto Rico’s total population changed as people of various ages and

To my knowledge, no similar studies have been conducted to see whether higher-than-normal death rates prevailed in the months immediately following Harvey and Irma. But it is certainly possible that that they did and that deaths have been undercounted for Harvey and Irma, too. Indeed, just recently, a study was published that found it to be common for serious hurricanes to have elevated death rates for months after the storm has passed.²⁰⁰⁷

The Report can be faulted for failing to make clear the radically different methodologies used in arriving at death tolls for the various hurricanes. It is inappropriate to leave the impression that María's death toll was 2975, while Harvey killed only 103 and Irma still fewer.²⁰⁰⁸ See Report

health conditions left, returned, and sometimes left again. With such changing circumstances, it may be hard to measure whether death rates are in fact elevated, and if they are, by how much. But once it's established that death rates are indeed unusually high following a disaster it's not necessarily a stretch to suspect a causal connection to the disaster (though it might turn out to be a very complex one).

²⁰⁰⁷ Robbie M. Parks, Jaime Benavides, G. Brooke Anderson, Rachel Nethery, Ana Navas-Acien, Francesca Dominici, Majid Ezzati, Marianthi-Anna Kioumourtzoglou, *Association of Tropical Cyclones With County-Level Mortality in the US*, JAMA (March 8, 2022) ("Among US counties that experienced at least 1 tropical cyclone from 1988-2018, each additional cyclone day per month was associated with modestly higher death rates in the months following the cyclone for several causes of death, including injuries, infectious and parasitic diseases, cardiovascular diseases, neuropsychiatric conditions, and respiratory diseases").

²⁰⁰⁸ Mary Anastasia O'Grady, *The Truth About Hurricane Maria*, Wall St. J., Sept. 16, 2018, ("Whether 'excess mortality' studies are 'the right way to count the dead' is not the issue, [meteorologist John] Morales observed. What matters is that they are "not available for most hurricane disasters" so there is no way to compare the findings with other similar events."), <https://www.wsj.com/articles/the-truth-about-hurricane-maria-1537129890>.

at 23 (calling Maria “the deadliest of the 2017 storms”).²⁰⁰⁹ We don’t know that.²⁰¹⁰ Apples must be compared to apples, not oranges or orangutans.

In addition, all three hurricanes destroyed thousands of homes, businesses, and vehicles. According to the National Hurricane Center, Harvey caused \$125 billion, Irma \$52.1 billion, and Maria \$90 billion in property damage.

No matter what anyone had done, these storms were going to be epic disasters. Civilization has come a long way since the 1899 San Ciríaco Hurricane (which is estimated to have caused 3800 *direct* deaths mainly in Puerto Rico), the Great Hurricane of 1900 (which caused 6000 to 12,000 *direct* deaths mainly in Galveston, Texas), and the Okeechobee Hurricane of 1928 (which *directly* killed 2500, most of them near Florida’s Lake Okeechobee). Despite that progress, I doubt there will ever come a time when hurricanes are no longer to be feared. They will always be potential calamities.²⁰¹¹

Of course, that’s not a reason to refrain from carefully examining and evaluating every aspect of the performance of emergency and post-emergency services provided by FEMA or for that matter by state and territorial governments, local governments, and organizations like the Red

²⁰⁰⁹ Commissioners Kladney and Adegbile also make this error in their statements. See Statement of Commissioner Debo Adegbile at 256; Statement of Commissioner David Kladney at 261.

Commissioner Kladney seems to have misunderstood the issue entirely. He chastises me for daring to take issue with the “excess death” approach to Maria’s death toll taken by the George Washington University study. Rebuttal of Commissioner David Kladney at 345. But I haven’t taken issue with it. I rather like the general approach. See *supra* at n. 2006. I think it is a useful way at looking at the issue and has been very useful in the COVID-19 context. I cannot comment on the particular study of Maria, because I don’t have access to the underlying data, especially the data used to calculate Puerto Rico’s fluctuating population over the course of the period studied. There is lots of room for error and for misunderstanding the data there. My point is different: When comparing two hurricanes, one should compare the “direct death” approach to the “direct death” approach, and one should compare the “excess death” method to the “excess death” method. With the “direct death” method, the data show Harvey to have been somewhat more lethal than Maria. The “excess death” method might easily come out differently, especially given the failure of Puerto Rico’s electrical grid. But to my knowledge nobody has attempted to analyze Harvey using the “excess death” approach. Consequently, we have nothing to compare Maria’s “excess death” figure to.

Commissioner Kladney comments that I “might agree” that I am not a statistician. Rebuttal of Commissioner David Kladney at 345. I do agree. I am a law professor and not a statistician. For the record, I have had some formal training in statistical methods. But even if I hadn’t had that training, the error in the report would have been easy to spot.

²⁰¹⁰ It would not surprise me to learn that Maria’s death toll was higher than Harvey’s or Irma’s given that the power loss in Puerto Rico dwarfed the much more temporary and less widespread power losses on the mainland. But we won’t have the appropriate evidence of that until studies of Harvey and Irma are done that are similar to the one George Washington University did for Maria.

²⁰¹¹ English speakers get the word “hurricane” from the Spanish “huracán,” which in turn is derived from a Taíno word. The Caribbean islands, which were the home to the Taíno for centuries before the arrival of Columbus, are no strangers to hurricanes.

Cross. Quite the contrary: It's a reason to put past performance under a microscope. That's how we learn. It's how we save lives when the next hurricane hits. Such a report—written by those with expertise in emergency management—would be extremely valuable.²⁰¹²

But this is not that report.²⁰¹³

We are the U.S. Commission on Civil Rights. We are made up of seven civil rights lawyers and one businessman. We have a small staff to assist in drafting and editing reports. But that staff is mostly civil rights lawyers too, along with a few social scientists. No one connected to the Commission has any expertise in handling emergencies of any kind. We are not the ones to put FEMA's or any other emergency service provider's performance under a microscope.²⁰¹⁴

²⁰¹² Commissioner Kladney takes the position that what I am saying is that FEMA should be above criticism. Rebuttal of Commissioner David Kladney at 343. I think it is obvious from this paragraph that isn't what I am saying. In addition, he generally accuses Commissioner Adams and me of being "complacent" and argues the report is simply offering "constructive criticism." But in fact the report offers such nuggets as FEMA is "in clear violation of federal court precedent and EEOC guidance." It's not constructive to make accusations that are not true. See *infra* at n. 2014. Nor is it constructive to set unreasonable standards for a government agency. There will not come a time when FEMA can offer real-time information in over one hundred languages, some of them with multiple dialects and multiple sign language variants. See *supra* at 313 & n. 1993.

Commissioner Kladney also seems to think that I deny that the Commission has any role at all in looking into FEMA's performance. To the contrary, as I wrote in this very Statement, "It is therefore clearly within our jurisdiction to look for evidence in connection with the hurricanes that anyone was denied assistance or given substandard assistance on account of their color, race, religion, sex, age, disability, or national origin." See *infra* at 324. My concern is that we haven't done a very good job of it. We can't even seem to state the law correctly. See *infra* at n. 2014. In addition, the report misleadingly suggests that the death rate from Maria wildly exceeded Harvey. See *supra* at 317-318. And it fails to emphasize the central point: By the end of the process, the federal government had given far more money to Puerto Rico for Maria than Texas got for Harvey. See *infra* at n. 2046 and accompanying text.

²⁰¹³ Commissioner Kladney questions why I voted for the report if I thought it was full of error. Rebuttal of Commissioner David Kladney at 344. **Answer: I did not vote for the report.** I abstained. I did not vote against it in deference to my progressive colleagues, because I knew there was no chance of improving it before the statutory deadline for its publication. But I certainly did not vote for it. He weirdly cites to page 59 of the transcript for our July meeting, which he believes shows I voted in favor of the report. But the Commission approved the report at our June meeting, not the July meeting. The July transcript does not contain a page 59. The June meeting does, but it shows I abstained. Transcript of June 24, 2022 Business Meeting of the U.S. Commission on Civil Rights, <https://www.usccr.gov/meetings/2022/06-24-commission-business-meeting>.

²⁰¹⁴ Since the Commission and its staff is largely made up of lawyers, one might think the one thing we would get right is the law. But we've not done especially well there either. In this Report, the Commission states that "testimony shows that FEMA's lower levels of assistance to Maria survivors failed to comply with the principles underlying Title VI and 44 CFR § 7.5, which prohibits disparate treatment based on race, national origin, and linguistic characteristics in clear violation of federal court precedent and EEOC guidance." Report at 193. This is gobbledygook. First of all, Title VI of the Civil Rights Act of 1964 does not apply to FEMA. See *Jersey Heights Neighborhood Ass'n v. Glendening*, 174 F.3d 180, 191 (4th Cir. 1999); *Washington Legal Foundation v. Alexander*, 984 F.2d 483, 487-88 (D.C. Cir. 1993); *Women's Equity Action League v. Cavazos*, 906 F.2d 742, 750 (D.C. Cir. 1990); *Cottrell v. Vilsack*, 915 F. Supp. 2d 81, 91 (D.D.C.), *aff'd* 2013 WL 4711683 (D.C. Cir. 2013). It applies to

I regret that the Commission issued a report that goes beyond our expertise and conveys unsolicited advice on how to best handle emergencies.²⁰¹⁵ For example, the Report states that “[c]onsolidating all disaster housing programs into HUD would streamline efforts, simplify the process, and result in better outcomes for survivors.” Report at 254. Maybe. But you can’t prove it by me. The Report also recommends that “FEMA should coordinate a task force, composed of representatives of the government, as well as the non-profit sector, to discuss recommendations on how to streamline processes, to ensure that these are faster.” Report at 254. Again, maybe. But if we’re talking about early responses, I suspect FEMA would be better off also including public utilities and private sector businesses like H-E-B, Walmart, and Home

recipients of federal funding. The same is true of 44 CFR § 7.5: By its plain terms, it applies only to the recipients of federal funding, not to federal agencies themselves.

But even if these provisions did apply to FEMA, the Commission has not shown the FEMA “failed to comply” with them. To begin with, Title VI applies only to actual discrimination (i.e., disparate treatment). *Alexander v. Sandoval*, 532 U.S. 275 (2001). Yet the evidence that the Commission cites as proof of a violation—that Spanish-speaking Puerto Ricans received disproportionately lower amounts of assistance for Maria recovery than English-speaking mainland Americans received—is at best evidence of disparate impact. To show a violation of Title VI, one would have to show that Spanish-speaking Puerto Ricans received less than English-speaking mainlanders, precisely *because* FEMA officials were motivated by a desire to give less to the former group based on their race, color, or national origin. But other motivations are overwhelmingly more likely here. For example, given that price of housing, home repairs, and much else tends to be higher in Texas and in Florida than in Puerto Rico, one would expect the amounts spent on those things would be lower in Puerto Rico. And there are many other more obvious explanations for the alleged “lower amounts” paid to Spanish-speaking Puerto Ricans than an intent to discriminate on the basis of race, color, or national origin.

Even the Commission’s suggestion that Title VI covers discrimination on the basis of “linguistic characteristics” is dicey. Even if it could prove that FEMA was motivated by a desire to discriminate against Spanish-speakers (as opposed to Puerto Ricans or Hispanics as a race or national origin), it’s not clear that Title VI covers this. Two of the three cases that are cited for this are Title VII cases (as is the EEOC guidance). Unlike Title VI, Title VII has been held to prohibit disparate impact. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). The remaining case concerns jury *voir dire*, but it comes out in *favor* of allowing potential jurors to be challenged based on their status as fluent speakers of both English and Spanish in a case in which witnesses were expected to testify in Spanish with an official translation provided for jurors. *Hernandez v. New York*, 500 U.S. 352, 371 (1991).

As for 44 CFR § 7.5, if it applied to FEMA (which it doesn’t), it does indeed appear to prohibit practices that “have the effect of defeating or substantially impairing accomplishments of the program as respect individuals of a particular race, color, or national origin.” This is in some sense a disparate impact standard. But it is doubtful that one could say that the vague evidence of “lower amounts of assistance” would rise to the level of “defeating or substantially impairing” the value of FEMA’s activities to a particular race, color, or national origin. That would require a very heavy degree of disparate impact. And even if it didn’t require a heavy degree of disparate impact, it requires the “lower amounts of assistance” to be in some sense unjustified. See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) (disparate impact liability under Title VII not absolute).

This is just one way in which the Report does a poor job of stating the applicable law. Since I cannot catalog them all in this Statement, my advice is not to rely on the Commission’s work to state the law correctly. See also Statement of Commissioner Adegbile at 258 (restating some of the Report’s legal errors).

²⁰¹⁵ The sum total of my experience with hurricanes is that I got rained on a lot in 1972 with Hurricane Agnes. It was the wrong week to stay in an unheated cabin in Virginia’s Blue Ridge Mountains.

Depot. On the whole, however, I'd feel a lot better dispensing advice on a topic we knew something about.²⁰¹⁶

One sign that the Commission is out of its depth is its contradictory advice:²⁰¹⁷ We apparently want federal agencies to speed up the processing of applications for benefits.²⁰¹⁸ But we also

²⁰¹⁶ I also regret the Report's decision to quote a statement by Tania Rosario-Méndez, Executive Director of *Taller Salud*, that the "federal preparedness and response of Hurricane Maria was at best mediocre; at worst, genocidal." Report at 213. Rewarding witnesses for hyperbole of this kind doesn't get us closer to the truth.

²⁰¹⁷ Another such sign is that we have a hard time getting our facts right. For example, the picture Commissioner Yaki paints of the services provided by the U.S.N.S. *Comfort* is quite misleading. He cites a witness (former Mayor Cruz) as testifying that "the *Comfort* was barely accessible to the Puerto Rican population." "In fact," Commissioner Yaki wrote, "the *Comfort* arrived 2 weeks after the disaster. In its 53-day deployment, it saw only an average of 6 patients a day."

The latter statement is *simply untrue*. The source he cites states that an average of six patients a day were *admitted* to the hospital. That doesn't even mean that only six patients were inpatients at the hospital at any one time. Since the *Comfort* took in the sickest patients it's safe to assume that many stayed for a long time. Moreover, the *Comfort* treated an additional 1,625 as *outpatients*. The same source also admits that the *Comfort*'s deployment "was not the only federal health care initiative after Maria hit." In particular, "[f]ederal field hospitals, clinics and medical shelters saw more than 30,000 patients." See Frances Robles & Sheri Fink, *Amid Puerto Rico Disaster, Hospital Ship Admitted Just 6 Patients a Day*, N.Y. Times, December 6, 2017.

In addition, the *Comfort* provided an array of services of other kinds. According to Wikipedia, it performed over 40,000 lab tests, filled over 16,000 prescriptions, provided 1,169 radiology services, provided acute dental care for 312, and provided 343 CT scans. Its sterilizers were used to sterilize, clean and wrap surgery kits for multiple hospitals. Additionally, because the *Comfort* had only the only functioning oxygen producing plant on the island, it filled the oxygen tanks for every hospital on the island (of which there are more than 60). That turned out to be 76,000 liters of oxygen. See Wikipedia Entry for USNS *Comfort* (T-AH-20), [https://en.wikipedia.org/wiki/USNS_Comfort_\(T-AH-20\)](https://en.wikipedia.org/wiki/USNS_Comfort_(T-AH-20)).

And that's not all. According to the Twitter Account of the U.S. Navy's Military Sealift Command, the *Comfort* supplied 10 tons of food and water. See https://twitter.com/mscsealift/status/932725788230737920?s=21&t=Ay6Q8ucBU_Mu8o7tzqqF7g.

All that said, I strongly suspect that Commissioner Yaki was correct that there was a lot of red tape involved. Alas, that is the inevitable result of the government-centered world that progressives have built for us over the last century or so. See Statement of Commissioner Michael Yaki at 274-275.

²⁰¹⁸ Another way in which this Report goes off track is its multiple suggestions that FEMA and other government agencies should prioritize those who are in "greatest need." This sounds wonderful until you think about what it means. To Diane Yentel, President and CEO, National Low Income Housing Coalition, Yentel, it apparently means this:

The recovery and mitigation process must be centered on survivors with the greatest needs and ensure equity among survivors, especially people of color, low-income people, people with disabilities, immigrants, LGBTQ [lesbian, gay, bisexual, transgender, and queer] people, and other marginalized people and communities.

Report at 218 (quoting Yentel Statement at 2).

want these agencies to have American Sign Language Interpreters on all their videos and to collect and make public more data on race, gender, disability, and other identity group affiliations. Report at 10, 253. We also want these agencies to eschew rigid rules and try to be flexible when applicants cannot prove their identity or title to their home using traditional methods. Report at 7, 227-231. In the real world, we can probably have faster, or we can have some of the extras that we are recommending. But insisting on both at the same time is a tough order.²⁰¹⁹

Here I feel like I have something to say: Preferential treatment based on race and sexual orientation is wrong. Insofar as that is what Ms. Yentel is suggesting, count me as opposed.

During the worse days of a hurricane, those without clean water to drink, food to eat, and a bed to sleep in are presumably in equal need. It's absurd to think FEMA should do anything but treat them equally. Anyone who is concerned that a multi-millionaire might claim one of FEMA's beef jerky emergency meals when he could have eaten at a fine restaurant (or claim a cot at an emergency shelter when he could have stayed at a five-star hotel) should relax. Few would choose such options if they had the resources to do better. For emergency providers to require strict proof of "need" would require time and resources that would be better used in other ways. And for emergency providers to give priority based on race or LGBT status would be abhorrent (not to mention unconstitutional).

The aftermath of a hurricane is a little different. At the point, federal programs kick in that are designed to rebuild property. The benefit from such programs runs to those who actually have property to rebuild. In such a situation, property owners are the ones who in in the "great need" as they are the ones who have lost something. Many have put years of their earnings and labor into purchasing a home only to see it destroyed or damaged by a natural disaster.

Note that in general assistance in rebuilding does not run to those who could be described as well off, since those with private insurance are ineligible. The beneficiaries are those without such insurance and hence a group that is in general not well off financially. Within this generally lower-income group, I see no strong reason to favor those with less property over those with more. Those with more will tend to be older individuals who have put their resources into their property and who may not be able to recover from the loss in the time they have left on Earth. A first come, first serve rule seems best here. Again, priority on the basis of race or LGBT status would be both abhorrent and unconstitutional.

Programs designed to prevent flood damage to property in the future present thorny questions (though some questions, like whether it is appropriate to give priority on the basis of race or LGBTQ status, are still easy). But consider this: If the federal government has limited funds and finds that it can either spend \$10 million to prevent a neighborhood of 100 modest homes worth \$100,000 each from flooding in the future or it can spend the same amount to prevent a neighborhood of 100 seriously dilapidated homes worth \$30,000 each, which option should it go with? Should it matter that one neighborhood is drug infested and the other isn't? Should it matter that in one neighborhood the underlying land could be quite valuable if it could be developed as a unit and made into office buildings? Fortunately for me, these issues are beyond the scope of this Report.

²⁰¹⁹ The statements by individual Commissioners also suffer from this defect. They want both fast and thorough. One interesting example of this is Commissioner Yaki's dissatisfaction with FEMA inspectors. He seems to believe that they should be "drawn from ... the communities they visit" and that they would do a better job if they were. But FEMA can't possibly have trained workforce ready and able to act in every community in the country just in case disaster hits there. To have that FEMA would need to employ and train millions and millions of individuals. At the same time, Commissioner Yaki wants FEMA to move faster. But if inspectors should be recruited and hired from the communities they visit that will take time. All this sounds again like the difference between the progressive and the conservative mind. Most conservative understand at an intuitive level that we live in a world of

The Commission's Role

So if emergency management isn't our forte, what *does* the U.S. Commission on Civil Rights do?

In general, our duties are described in the statute that governs the Commission this way:

The Commission—

...

(2) shall—

- (A) study and collect information relating to;
- (B) make appraisals of the laws and policies with respect to;
- (C) serve as a national clearinghouse for information relating to; and
- (D) prepare public service announcements and advertising campaign to discourage;

discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice.²⁰²⁰

It is therefore clearly within our jurisdiction to look for evidence in connection with the hurricanes that anyone was denied assistance or given substandard assistance on account of their color, race, religion, sex, age, disability, or national origin.²⁰²¹

limited resources. Nowhere does this show up more clearly than in an emergency. Too often progressives fail to recognize these limits.

²⁰²⁰ In addition, the Commission has jurisdiction over voting rights issues as stated below:

§ 1975a. Duties of the Commission

(a) Generally

The Commission—

- (1) Shall investigate allegations in writing under oath or affirmation relating to deprivations—
 - (A) Because of color, race, religion, sex, age, disability, or national origin; or
 - (B) As a result of any pattern or practice of fraud;
 of the right of citizens of the United States to vote and have votes counted

42 U.S.C. § 1975a.

²⁰²¹ In addition to the open-ended authority to study issues of discrimination on the basis of color, race, religion, sex, age, disability, or national origin, the Commission is required “to submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States.” 42 U.S.C. § 1975a(c)(1). This Report is intended to fulfill that requirement. FEMA and the other agencies that deal with disaster response are not civil rights enforcement agencies (though FEMA does have an office that ensures compliance with and enforces civil rights law within FEMA—its Office of Equal Rights). Rather FEMA and the other such agencies are subject to civil rights laws and hence monitoring their compliance with the law is monitoring civil rights enforcement efforts.

Presumably this task could be approached at least two different ways. First, the report could look for evidence that *individuals* were discriminated against on account of their color, race, religion, sex, age, disability, or national origin (regardless of whether the discrimination took place in Texas, Louisiana, Florida, the U.S. Virgin Islands or Puerto Rico). The Report tries to do a little of that.²⁰²² To my mind at least, it didn't find much. It's unfortunate that FEMA didn't always have exactly the right translator available at just the right moment. It's unfortunate that sometimes the translations were confusing. But that doesn't mean that anybody was discriminated against. (And you can bet the English versions of many documents were confusing too. Such is the nature of government documents.)

²⁰²² One consistent problem with Commission reports is that they tend to take on too much. We need to remind ourselves to be mission modest. It's better to write a report that brings new understanding and insight to a narrow topic than one that skates superficially over a broader topic.

One example of a narrow topic is what the Report calls "an uptick in nursing home admission after Harvey's landfall in Texas." The Report states:

This trend may serve as evidence of unjustified segregation of individuals with disabilities, and if in fact the case, would constitute discrimination in violation of Title II of the ADA. The lack of data, however, makes it difficult to definitively draw the conclusion that this practice following Harvey violated Title II and the *Olmstead* ruling. The Court in *Olmstead* held that public entities must provide community-based services to persons with disabilities when (1) such services are appropriate; (2) the affected persons do not oppose community-based treatment; and (3) community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability services from the entity.

Report at 91.

The odds that the uptick was unjustified seem slim to me. During Hurricane Harvey, over 10,000 people had to sleep at the George R. Brown Center. About 5000 had cots; the rest slept on the cold tile floor until the Red Cross arrived with more cots on August 30th. Most were there about a week. Some were there for over three weeks. See Casey Gale, *22 Days at the George R. Brown Convention Center*, *Convene Magazine*, Dec. 1, 2017. Under the circumstances, I'd have been thankful if my physically or mentally disabled friends or relatives had been spared that experience and instead been given a warm bed at a Texas nursing home somewhere away from the full force of the storm.

But it's always possible I'm missing something. The issue obviously disturbed the National Council on Disability. It issued a report entitled "Preserving Our Freedom: Ending Institutionalization of People with Disabilities During and After Disasters" that, rightly or wrongly, sounded the alarm about the emergency use of nursing homes.

Maybe the Commission could have bird-dogged the facts behind the statistics cited by the National Council on Disability. Who were the individuals that made up the population spike at Texas nursing homes during and immediately after Harvey? Were they brought there voluntarily? Were they treated well? Under what circumstances were they released? Were there better alternatives that were ignored?

This might have been a more manageable topic than the one we ultimately undertook, and it might have settled the question of whether a problem with over-institutionalization existed during Harvey. Bear in mind that the case cited in the Report, *Olmstead v. L.C.*, 527 U.S. 581 (1999), was not about the temporary use of institutions like nursing homes in an emergency.

Mostly, the Commission took a different approach. It sought to determine if the responses to the two hurricanes—Harvey and María—were different in a way that would suggest discrimination. Put more pointedly, did federal officials respond less energetically in Puerto Rico on account of the color, race, or national origin of its inhabitants?²⁰²³

Since some in the media had alleged exactly that, I can see why some of my Commission colleagues were eager to investigate. But there have always been problems with this approach. It's worth remembering that there are far more Hispanics in Texas (and far more in Florida, too) than in Puerto Rico. Puerto Rico's total population was only 3.3 million in 2017. According to the 2020 census, Texas has almost 11.5 million Hispanics, and Florida has more than 5.7 million. Harris County, Texas alone has 2,034,709 Hispanics; Miami-Dade County, Florida alone has 1,856,938. If federal officials wanted to mistreat Hispanics, responding energetically to Texas and Florida while responding lackadaisically to Puerto Rico would not have been the most efficient way to do that.²⁰²⁴

That doesn't eliminate the possibility that anti-Hispanic sentiment could have motivated federal officials, but it makes it less likely. Nor does it eliminate the possibility that the officials were motivated by a specifically anti-Puerto Rican animus, given that the majority of Hispanics in both Texas and Florida are not Puerto Rican. But we uncovered no evidence of such motivations.²⁰²⁵

²⁰²³ Another related question might be: Did federal officials respond less energetically in Puerto Rico on account of Puerto Rico's status as a territory rather than a state? As Commissioner Adams points out, it would not be surprising to learn that having elected representatives in Congress with the power to vote is useful when it comes to getting attention from the federal bureaucracy. That is part of what their constituents expect Members of Congress to do. See Statement of Commissioner Christian Adams at 308-310. This question, however, is not within the Commission's jurisdiction.

²⁰²⁴ The Report seems to assume that everyone in Texas is an English speaker. It recites that "Spanish speaking Puerto Ricans received disproportionately lower amounts of assistance for María recovery than English speaking mainland Americans received." Report at 193. But as far as I can tell, the sources cited don't break down assistance recipients by language spoken. There are many Spanish speakers in Texas. Moreover, differences in amounts received will often be a function of different housing, different ways in which homes were damaged, and different overall costs of repair. What would be surprising would be if the averages were the same.

²⁰²⁵ About a third of Commissioner Yaki's statement is devoted specifically to Donald Trump rather than to FEMA or other federal agencies involved in disaster relief. In those pages, he attempts to show that Trump (1) was misinformed about some basic facts during his trip to Puerto Rico (e.g. he thought María was a Category 5 storm when it hit Puerto Rico when in fact it was then only a Category 4); (2) was rude to Puerto Ricans during that trip (e.g. he tossed rolls of paper towels to members of a crowd); and (3) was generally hostile to the people of Puerto Rico (e.g. he talked about how he would like to trade Puerto Rico for Greenland). Not every complaint about the former president is unfounded, but it does seem to me that Commissioner Yaki may have a case of Trump Derangement Syndrome. See Statement of Commissioner Michael Yaki at 282-289.

More important, the differences between Harvey and Irma on the one hand and Maria on the other were so great that attributing any differences in the federal response to anything but those genuine differences seems more like a political stunt than an honest effort to evaluate the situation.

I take some comfort in the fact that Judge Timothy Hillman (an Obama appointee, if that matters) seems to agree that the evidence of discrimination is lacking. In *Santos v. FEMA* (D. Mass. 2018), plaintiffs asked the court for a preliminary injunction requiring FEMA to extend its Transition Shelter Assistance for evacuees from Maria.²⁰²⁶ They argued in part that their constitutional right to equal protection and their statutory rights to non-discrimination had been violated. Judge Hillman ruled that they had failed to prove their case:

Plaintiffs have cited to what they claim are “stark differences” in FEMA’s treatment of victims of Hurricane Harvey and Irma versus its treatment of Puerto Rican victims of Hurricane Maria. ... However, Plaintiffs fail to address how the three hurricanes impacted the areas which were affected Simply put, as the record currently stands, Plaintiffs have failed to make out a viable equal protection claim because they have not established either that they were similarly situated to other hurricane victims, and even if they were, that they were treated differently.²⁰²⁷

I’m sure the first of his complaints is true. Mistakes like that happen all the time during the period following a disaster. Five years later, there is still a lot of misinformation out there, including some in Commissioner Yaki’s own statement. (See *supra* at n. 2017).

The second of Commissioner Yaki’s complaints seems unfair. I was a bit surprised by San Juan Mayor Carmen Julín Cruz’s statement: “This terrible and abominable view of him throwing paper towels and throwing provisions at people, it really—it does not embody the spirit of the American nation, you know?” Having viewed the video, Trump’s actions were playful and seemed to be appreciated by the crowd. As Trump put it a few seconds after tossing the paper towels, “There’s a lot of love in this room ... a lot of love in this room. Great People.” It seems churlish to criticize him for that.

The third of these also seems unfair. One of the main items of evidence seems to be Trump’s proposal to trade Puerto Rico for Greenland, which was an obvious joke. Perhaps it was even inspired in part by the over-the-top criticism he was getting from Mayor Cruz (in contrast to Puerto Rico’s governor who was not inclined to offer such criticism).

More important, Trump’s conduct is unrelated to the actions of FEMA and the other federal arms acting to help Puerto Rico in the emergency. No one could say that Trump is a model of restraint and propriety, but the idea that the conduct Commissioner Yaki described had anything to do with FEMA’s and other government agencies’ effectiveness seems quite unlikely.

²⁰²⁶ 327 F. Supp. 3d 328, 342-43 (D. Mass. 2018).

²⁰²⁷ *Id.* at 342-43.

To be sure, Judge Hillman was looking at a different record from the one the Commission has before it. But for both, the conclusion should be the same: Evidence of discrimination hasn't been presented. Conclusory allegations are insufficient.

Different Circumstances

Consider just how different the circumstances were:²⁰²⁸

1. **Three Hurricanes:** Hurricane Harvey came first. But soon thereafter, FEMA had to deal with two hurricanes. And then three. And don't forget the wildfires that FEMA was dealing with in California. It is hardly surprising that FEMA would be unable to respond as effectively by the time Maria hit. One measure of the difficulty is discussed in this very Report: "FEMA faced additional unique struggles when providing recovery aid in Puerto Rico. Maria landed in Puerto Rico before the water, tarps, and cots at FEMA's Caribbean Distribution Center warehouse had been replenished. The Caribbean Distribution Center was the only emergency stockpile in the region and is located in Puerto Rico. When Maria hit, 83 percent of all the items, including 90 percent of the water, and all of the cots and tarps, had been deployed after Irma hit the U.S. [mainland] and the [U.S.] Virgin Islands." Report at 168.

We all hope that the nation will never again have to deal with three major hurricanes in such a short time.²⁰²⁹ (But let's not count on it.)²⁰³⁰

²⁰²⁸ Commissioner Kladney states that Commissioner Adams and I are offering "excuses" for "FEMA's failures," and argues that "the fact that they are making excuses is necessarily a concession that failures occurred." Rebuttal of Commissioner David Kladney at 347. Providing factual information about the situation FEMA faced is not an excuse. Each of the things I describe in this list is a fact. Without understanding these facts, it is easy to get carried away and attempt to assign blame. But doing so would be wrong and counterproductive.

²⁰²⁹ In the original draft of the concept paper for this investigation, Commission Yaki cited to the number of tweets then-President Trump issued about Hurricane Maria (as opposed to Hurricane Harvey) and the number of trips he took to Puerto Rico (as opposed to Texas) as evidence of discrimination. According to the concept paper, Trump had paid more attention to Maria than to Harvey. I can't say what motivates President Trump (or any other elected official's decisions to issue tweets). But I'm pretty sure those in charge of rescue operations at FEMA were not counting tweets during the height of the emergency. And the last thing Puerto Rico needed in September of 2017 was a Presidential visit (with all the preparations that go with it) when Job #1 was to get the power back on as soon as possible for as many people as possible. Michael Yaki, *Concept Paper: Echoes of Katrina: Catastrophes and Civil Rights* at 3.

²⁰³⁰ Another point was brought out in the 2018 GAO report analyzing FEMA's response to the 2017 hurricanes and wildfires. According to this Report, FEMA stated that the governments of Texas and Florida had prepared for hurricanes Harvey and Irma by requesting that FEMA deploy resources before the hurricanes arrived. Texas, Florida, and California all had a long history of working with FEMA. FEMA and the state governments were therefore able to smoothly coordinate their responses to the hurricanes and wildfires. See GAO, *2017 Hurricanes and Wildfires: Initial Observations on the Federal Response and Key Recovery Challenges* [hereinafter *Hurricanes and Wildfires*], Sept. 2018, 24-35, <https://www.gao.gov/assets/gao-18-472.pdf>.

2. ***Entire Power Grid Down in Puerto Rico:*** Hurricanes frequently cause a loss of power. In Texas, hundreds of thousands of people were temporarily without electricity during Harvey.²⁰³¹ But it didn't last long. In Puerto Rico, the problem was exponentially worse. Puerto Rico's power supply has long been unreliable.²⁰³² When Irma sideswiped the

Puerto Rico, on the other hand, was not prepared for Hurricane Maria. Both FEMA and DOD told GAO that in Puerto Rico, their agencies had to perform functions that were typically performed by local governments. Puerto Rico had not pre-positioned sufficient supplies to respond to a hurricane of Maria's magnitude and was limited in its ability to do so because of a lack of physical space. Furthermore, due to Puerto Rico's precarious financial position, PREPA could not adequately strengthen the power grid against hurricanes. *See Hurricanes and Wildfires* at 30-35.

Hurricane Maria devastated the already fragile and outdated infrastructure in Puerto Rico and the U.S. Virgin Islands, which complicated response efforts according to the FEMA Administrator and Puerto Rico officials. . .

The damage was more extensive in Puerto Rico. Three months after Hurricane Maria hit, Puerto Rico had 65 percent of its power restored while the U.S. Virgin Islands had closer to 90 percent, according to FEMA officials. The U.S. Virgin Islands was quicker to restore power in part due to previous infrastructure investments and mitigation efforts implemented by the government, according to FEMA officials.

According to Puerto Rico officials, much of the territory's infrastructure (e.g., roads, sewage systems, and bridges) is more than 50 years old. As a result, some replacement parts were no longer available and had to be specially manufactured, delaying power restoration. Moreover, many of the power lines connecting the large power stations in southern Puerto Rico through the mountains to the north – where the majority of the island's residents reside – were destroyed by the storm according to officials from the Puerto Rico Electric Power Authority (PREPA).

According to FEMA and Puerto Rico Aqueduct and Sewer Authority officials, Puerto Rico had limited access to federal funds to renew and replace infrastructure prior to hurricanes Irma and Maria due to its outstanding public debt. Specifically, PREPA officials told us that their ability to prepare for the hurricane season was impacted by Puerto Rico's financial situation due to vendor concerns with reimbursement for services and goods.

Hurricanes and Wildfires at 32-35.

²⁰³¹ Tom DiChristopher, *Texas Utilities Struggle to Restore Power as Harvey Hampers Progress*, CNBC.com, Aug. 28, 2017, <https://www.cnbc.com/2017/08/28/texas-utilities-struggle-to-restore-power-as-harvey-hampers-progress.html>. See also *Hurricane Harvey Caused Electric System Outages and Affected Wind Generation in Texas*, Today in Energy, Sept. 13, 2017, <https://www.eia.gov/todayinenergy/detail.php?id=32892>.

²⁰³² Tropical cyclones regularly knock out power in Puerto Rico. For example, in recent years the following storms led to significant outages: Tropical Storm Jeanne (2004), Hurricane Earl (2010), Hurricane Irene (2011), Tropical Storm Bertha (2014), Hurricane Cristobal (2014), Tropical Storm Erika (2015), and Hurricane Irma (2017). See *List of Puerto Rico Hurricanes*, Wikipedia, https://en.wikipedia.org/wiki/List_of_Puerto_Rico_hurricanes. But none of these did nearly the damage of Maria.

A *Wall Street Journal* article had this to say about Puerto Rico's electrical system at the time of Maria:

Prepa's problems have been decades in the making. Early in its history, it earned praise for powering Puerto Rico's industrialization efforts in the 1940s and 1950s. But over time, it became less efficient, energy analysts say.

island, there were widespread power outages and failures of water service. But a week later María blew down 80% of Puerto Rico's utility poles and *all* its transmission lines, thus throwing the entire island into darkness. The system would need to be rebuilt. Nearly all cell phone service was killed. Municipal water systems were unusable.²⁰³³

I can barely imagine how hellish this must have been. But this difference between María and Harvey must also be kept in mind when comparing the effectiveness of the two relief efforts. If coming to the rescue of millions in the wake of a deadly hurricane seems like to tough job, imagine how much more difficult it is without power or cellular service ... on an island.²⁰³⁴ It is said the employees of the U.S. Postal Service were among the many heroes in Puerto Rico in the aftermath of María.²⁰³⁵ That's how bad communications were.

Its generating plants, which rely on imported oil for about 60% of their energy production, are mostly obsolete and require major upgrades or outright replacement, said Miguel Soto-Class, president of the Center for a New Economy, a nonpartisan think tank in San Juan that has done in-depth analyses of the utility's finances.

Power outages are common. A fire at one of the utility's plants in September triggered a blackout across the island that left many customers without power for days.

Yet prices are high. In April, Prepa's average electricity rate was 20.1 cents per kilowatt-hour, down from 25 cents in 2013 but still close to double the average mainland U.S. rate of about 12 cents, according to Moody's.

Arian Campo-Flores and José de Córdoba, *Puerto Rico's Power Woes Are Decades in the Making*, Wall St. J., September 23, 2017, https://www.wsj.com/articles/puerto-ricos-power-woes-are-decades-in-the-making-1506176140?mod=article_inline. See also Maria Gallucci, *The Privatization of Puerto Rico's Power Grid is Mired in Controversy: Nearly Three Years after Hurricane Maria, the Island's Grid Remains Vulnerable and Brittle*, IEE Spectrum, July 8, 2020 (“In most of the emergencies that we've had, the centralized grid has failed,” says Lionel Orama Exclusa, an electrical engineering professor at the University of Puerto Rico-Mayagüez and member of Puerto Rico's National Institute of Energy and Island Sustainability).

²⁰³³ Richard J. Pasch, Andrew B. Penny & Robbie Berg, *National Hurricane Center, Tropical Cyclone Report: Hurricane Maria*, Feb. 14, 2019 at 7.

²⁰³⁴ A few days after María hit, San Juan Mayor Carmen Yulín Cruz said at a dramatic press conference, “I cannot fathom the thought that the greatest nation in the world cannot figure out the logistics for a small island of 100 miles by 35 miles,” and “we are going to see something close to a genocide.” She was being unfair. The logistical problems were staggering. Since María, Cruz (now the Harriet L. Weissman and Paul M. Weisman Distinguished Fellow in Leadership at Mt. Holyoke College) has accepted numerous leadership awards apparently for her very emotional appeals for help during the crisis. There's a place for that in emergencies. Still, for me, the one deserving of awards are the engineers and other workers with the know-how and the willingness to knock themselves out to get the power going again. Kudos to them.

²⁰³⁵ Hugh Bronstein, *U.S. Mail Carriers Emerge as Heroes in Puerto Rico Recovery*, Reuters.com, Oct. 9, 2017, (“With the Puerto Rico power grid shredded by Hurricane María, the U.S. Postal Service has taken the place of cellphone service at the forefront of island communications”), <https://www.reuters.com/article/us-usa-puertorico-mail/u-s-mail-carriers-emerge-as-heroes-in-puerto-rico-recovery-idUSKBN1CE15G>.

It took nearly a year to restore the power grid to every part of the island. In the meantime, large and small generators were brought in to bridge the gap as best it could be bridged. But those generators took time to install and could never fully cover the island's needs. The only silver lining I can see to this is that millions of Puerto Ricans now know how fragile modern civilization—or any civilization—can be. I wish we all could understand that.²⁰³⁶

²⁰³⁶ One disappointing aspect of this Report is its failure to flesh out the facts on the Puerto Rico's power loss. By mid-November, power generation was restored to 50% of previous capacity (though it fell back some later in the month). Greg Allen & Marisa Peñaloza, *When Will Power Come Back to Puerto Rico?: Depends Who You Ask*, NPR, Nov, 16, 2017, <https://www.npr.org/2017/11/16/564439127/when-will-power-come-back-to-puerto-rico-depends-who-you-ask>. Media reports have emphasized the 11 long months it took to get PREPA back in service for 100% of the island. The role of generators in bridging the gap has gotten less attention, but it's gotten some. On October 7, 2017, a little over two weeks after Maria hit Puerto Rico, the New York Times reported:

Hurricane Maria's near total destruction of the commonwealth's electric power grid has transformed Puerto Rico into Generator Island. Running on gas or diesel, and ranging from lawn mower to moving-truck size, the generators are the only option for the roughly 90% of the island that has no access to the decimated grid. Generators now power big-box stores, high-rise apartment buildings, auto shops, fast-food restaurants, wastewater treatment plants and little country homes. And their low, incessant groan is the new drone note in the discordant symphony of post-storm Puerto Rican life.

...

Many big-box stores and hardware stores are selling out of generators for home use. Julito Ramírez, the Planet Honda general manager, said that his company was having a hard time keeping up with demand, selling 250 to 300 units per day. After ordering all the generators he could find in the United States, he has turned to a cache he found in Canada.

"We are in that cycle of finding and bringing, and finding and bringing," Mr. Ramírez said. The generator everyone wants, he said, is a \$6000 model that can run a home air-conditioning system. The biggest model he had in stock this week was a \$2,300 machine that can run a refrigerator, some lights, a washing machine—but not an air conditioner.

...

Across the island, the Army Corps of Engineers has set up 34 huge generators so far, running everything from police departments to water pumping facilities to a Prepa office, according to Lisa Hunter, a spokeswoman for the Corps. Corps officials said on Friday that 177 other generators arrived late in the week, with some of them headed to the United States Virgin Islands.

Camilla Fiebelman, a founder of the Puerto Rico chapter of the Sierra Club who currently runs the Rio Grande chapter, said that Facebook was full of complaints about the generator noise on the island these days.

Richard Fausset, Frances Robles & Deborah Acosta, *Minus Electrical Grid, Puerto Rico Becomes Generator Island*, New York Times, Oct. 7, 2017.

Obviously not everybody could afford home generators like the ones described in this article, and even if they could, manufacturers would not be able to make enough of them to meet the demand. So at the same time that many organizations, including the Army Corps of Engineers and PREPA were scrambling to re-establish the electrical grid, a parallel effort to establish temporary power was underway. The Army Corps of Engineers described that effort this way:

3. ***Island versus Mainland: Getting Supplies In:*** Even without the power disaster, getting help to Puerto Rico would have been a lot harder than getting it to Texas, Louisiana, and Florida.²⁰³⁷ The distance from Austin to Houston is just 165 miles. Major retailers like H-E-B and Walmart were able to drive semi-trucks into the areas affected by Harvey and deliver bottled water, ready-to-eat foods, flashlights, batteries, and other items used in emergencies. By contrast, any supplies going to Puerto Rico would have to come over 1000 miles from the mainland by sea or by air.²⁰³⁸ ““We had problems getting

As the various agencies deployed across Puerto Rico to assess the power grid damages, the Albuquerque District Emergency Temporary Power Planning and Response Team (known as PRT), one of seven in the Corps, worked with the U.S. Army 249th Engineer Battalion “Prime Power,” along with contractor teammates to tackle the daunting mission of providing life-saving temporary power generation to critical facilities.

...

The PRT worked in response to FEMA’s direction to quickly perform ... generator installations. By Oct. 28, 2017, the team would break the previous mark of 310 generators installed set during the Hurricane Katrina response efforts in 2005. By the end of October the team would reach 366 generators installed, averaging approximately twenty installations a day.

...

In addition to the Albuquerque PRT, at the request of Puerto Rico Governor Ricardo Roselló, FEMA tasked the Corps to maintain and repair non-federally installed generators. USACE Headquarters deployed the Honolulu District Temporary Emergency PRT to take on this new mission.

...

At the height of the Temporary Emergency Power operations, the Corps installed more than 1,600 generators.

Edward Rivera, *Engineering Solutions for the Nation’s Toughest Problems: USACE Tackles Puerto Rico’s Power Grid*, U.S. Army, Apr. 2, 2018, https://www.army.mil/article/202684/engineering_solutions_for_the_nations_toughest_problems_usace_tackles_puerto_ricos_power_grid.

²⁰³⁷ As our experiences with supply issues during the COVID crisis have taught us, logistics are never as easy as you think they’ll be. Ports can handle only so much traffic at a time. Paul Berger, *Shipping Bottlenecks Hit Port of New York and New Jersey*, Wall St. J., May 18, 2022, <https://www.wsj.com/articles/shipping-bottlenecks-hit-port-of-new-york-and-new-jersey-11652902981>.

²⁰³⁸ When the Commission undertook this Report, I’m not sure all my colleagues realized this. For example, in the original draft of the concept paper for this Report, Commissioner Yaki stated that within six days of Harvey 73 helicopters had been deployed to the Houston area, but that it took at least three weeks before a comparable number of a helicopters were involved in dealing with Puerto Rico’s needs. Michael Yaki, *Concept Paper: Echoes of Katrina: Catastrophes and Civil Rights at 2*. It’s clear he considered this evidence of discriminatory treatment.

As far as I know, the Commission never verified whether such a delay had in fact occurred, and if it did, what had caused it. One thing that Commissioner Yaki evidently did not take into account is the fact that helicopters have a very limited range. If the information I have gleaned from the internet is correct, there are no helicopters currently in service that can be flown nonstop from Miami (the closest mainland city to Puerto Rico) to San Juan. They’d run out of fuel. See *Helicopters with the Longest Range*, FAIR LIFTS, <https://www.fairlifts.com/helicopter-with-the-longest-range/>. The only helicopter ever produced that can fly that distance non-stop was the Lockheed AH-56 Cheyenne, which was produced between 1967 and 1969. According to Wikipedia, only four still exist and they are in storage or on display rather than in service. See *Lockheed AH-56 Cheyenne*, Wikipedia https://en.wikipedia.org/wiki/Lockheed_AH-56_Cheyenne. Consequently, FEMA would have had to get additional helicopters Puerto Rico some other way (assuming they were needed). That can be done, but it will take longer.

everything,’ Michael Byrne, the FEMA federal coordinating officer for Puerto Rico, told FRONTLINE and NPR. ‘When you have to ship it, when you have to add seven days or something longer to everything that you want to bring in ... it’s definitely a challenge.’”²⁰³⁹

In his Statement, Commissioner Kladney leads with a quote from Donald Trump: “‘The response and recovery effort probably has never been seen for something like this ... [t]his is an island surrounded by water, big water, ocean water.’” Statement of Commissioner David Kladney at 261. Commissioner Kladney writes as if he thinks this is a “gotcha” of some sort. Sometimes I agree with the former President and sometimes I don’t. But “big water, ocean water” sounds right to me. In massive rescue operations, logistics matter. They matter a lot.

4. ***Island versus Mainland: Getting People Out:*** Texas’s affected population was also much more able to get out of harm’s way. Many were able to evacuate to parts of the state that are further inland—where they might stay with relatives or friends, rent a hotel room, or even camp out.²⁰⁴⁰ Puerto Rico is an island. It is impossible to get more than 20 miles from the coastal areas of the main island. Moreover, the parts of the island that are the furthest from the coast tend to be mountainous. In torrential rains, fast-moving flash floods are a threat there. As a result, getting entirely out of harm’s way was not possible, except for the lucky few who were able to leave the island by air in the days leading up to the hurricane. That means more people were stuck in the middle of the disaster and needed temporary housing, food, and water.
5. ***Wind versus Rain:*** Although Harvey hit Texas as a Category 4 hurricane, by the time it reached the Houston area, it was primarily a prodigious rainstorm. In Houston itself, 35.48 inches of rain were dumped during the four days of Harvey. In nearby Nederland, 60.58 inches were reported. Flooding was thus the primary problem. By contrast, with Maria, rainfall over San Juan was 10-15 inches with 15-20 inches in Bayamon. That was enough to cause considerable flooding. But in addition, the fury of Maria’s winds pulled down trees and ripped off roofs. While rains eventually recede on their own, trees had to be removed from the roadways one by one in Puerto Rico, sometimes with only

Complications and delays add up. The plain truth is that logistics get more complicated when you’re dealing with an island over 1000 miles away.

²⁰³⁹ Nicole Einbinder, *How the Response to Hurricane Maria Compared to Harvey and Irma*, PBS Frontline, May 1, 2018, <https://www.pbs.org/wgbh/frontline/article/how-the-response-to-hurricane-maria-compared-to-harvey-and-irma/>.

²⁰⁴⁰ Tevi Troy’s written testimony before the Commission stated: “[I]t is harder for the residents themselves to evacuate when planes and boats are the only avenues of escape. We saw the lines of cars on interstate 95 headed north from Florida before Irma. Such an escape was not available to Puerto Ricans or Virgin Islanders. At the same time, this hurdle made it that much harder for the Good Samaritans to assist. Dallas’ ‘Texas Kosher BBQ’ brought badly needed kosher food to observant Jewish Houstonians who had been subsisting on Chex Mix. Dallas is 239 miles from Houston. Puerto Rico is only 110 miles across, and the Virgin Islands even smaller, limiting the geographic range from which help could come.” Statement of Tevi Troy at 4 (June 25, 2021).

handsaws and axes to work with. That no doubt contributed to the delay in early relief reaching many parts of the island.

6. ***PREPA's Bankruptcy:*** Even prior to the hurricanes, Puerto Rico's publicly owned power company—Puerto Rico Electric Power Authority or PREPA—was in bankruptcy. The same wasn't true for power companies in Texas or Florida. Bankruptcy makes a difference. Comedienne Sophie Tucker is often credited with saying, "I've been rich, and I've been poor. Believe me, honey, rich is better."²⁰⁴¹ The same could be said of solvency and bankruptcy. Solvency is better. Among other things, when a power company needs a large amount of money for an emergency, and it has benefactors who might be willing to give it that money, the benefactors can do so without fear that the money will end up in the pockets of the company's creditors rather than going to the emergency.²⁰⁴² I've little doubt that delays in getting Puerto Rico's power back on would have been shortened had PREPA not been in bankruptcy.

7. ***Differences in Size and Population of Affected Areas:*** The population of the affected counties in Texas (approximately 8 million) is much larger than the 2017 population of Puerto Rico (3.3 million).²⁰⁴³ And the area is even more disproportionate. Just the nine-county Houston-The Woodlands-Sugar Land metropolitan statistical area is almost three times the size of Puerto Rico. And the Hurricane Harvey disaster area included 60 Texas counties and 20 Louisiana parishes in total, making the area massively larger than Puerto Rico. The different population and area sizes must be kept in mind when looking at comparisons of number of bottles of water, meal kits, and federal personnel between

²⁰⁴¹ E.g., *Sophie Tucker Quote*, LibQuotes, <https://libquotes.com/sophie-tucker/quote/lbd5x5v>.

²⁰⁴² PREPA's creditors did indeed argue that the damage to Puerto Rico's power grid were exaggerated. See Dawn Giel, *PREPA Bondholders Dispute Damages to Puerto Rico's Power Grid*, CNBC.com, Nov. 3, 2017, ("A large group of bondholders of Puerto Rico's beleaguered power utility say that the extent of the damages to the island's power grid have been grossly exaggerated and that the Oversight Board has overstepped its authority by attempting to appoint a chief transformation officer to manage the bankrupt utility"), <https://www.cnbc.com/2017/11/03/prepa-bondholders-dispute-damages-to-puerto-ricos-power-grid.html>. I don't pretend to understand the complex procedures that governed PREPA's situation. What I can say is that PREPA's creditors were fighting for their share of whatever pie existed, and the situation almost certainly slowed things down.

²⁰⁴³ Another factor worth mentioning is age demographics. Puerto Rico has a higher proportion of its population age 65 or older than any of the 50 states. According to population estimates by the U.S. Census, it is 22% for Puerto Rico, which is only a little higher than Florida (21.3%) but quite a bit higher than Texas (13.2%). Lillian Kilduff, *Which U.S. States Have the Oldest Populations?*, Population Reference Bureau, Dec. 22, 2021, <https://www.prb.org/resources/which-us-states-are-the-oldest/>. Older residents are more likely to have health or mobility issues that require medical attention.

Commissioner Yaki points to CDC statistics on disability in his Statement. He points out for example that 21 percent of Puerto Rican adults have mobility difficulties. Statement of Commissioner Michael Yaki at 275-276. I checked through the CDC web site. No other state or territory came close to that number. I've no doubt this added to the difficulties faced by the people of Puerto Rico and by FEMA employees trying to help. See Disability & Health U.S. State Profile Data: Adults 18+ Years of Age, <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/index.html>.

Harvey and Maria.²⁰⁴⁴ They also must be kept in mind when comparing the amount of financial assistance given to Harvey victims and the amount given to Maria victims.²⁰⁴⁵

8. ***Differences in Median Household Income:*** The median household income in Texas in 2020 was \$68,093. In Puerto Rico, it was \$20,474. That couldn't help but make a difference. When residents can pay for their stay at a hotel or their own home or business repairs, that makes things easier on FEMA, HUD, and the SBA. Given the income difference, Texans were also more likely to have private insurance. When Allstate, American Family, Chubb, Farmers, Liberty Mutual, Nationwide, State Farm, Travelers, and USAA are on the job, FEMA, HUD, and the SBA have that much less to worry about. The long process of rebuilding what had been lost can move faster.

Even without all these distinctions, it is difficult to maintain at this point that Puerto Rico was discriminated against. When we began this investigation, we were under the impression that Puerto Rico and its citizens had received less money than Texas and its citizens (or that Florida and its citizens). ***But, after all was said and done, the amount of money from the federal***

²⁰⁴⁴ For evidence, the original concept paper for this project cited stated that in the first nine days after Harvey, FEMA provided 5.1 million meals, 4.5 million liters of water, and over 20,000 tarps as well as 30,000 personnel on the ground. By contrast, it asserts that FEMA provided only 1.6 million meals, 2.8 million liters of water, and 5000 tarps and 10,000 personnel. See Michael Yaki, *Concept Paper: Echoes of Katrina: Catastrophes and Civil Rights* at 2. I don't know if these numbers are accurate, but even if they are, they don't come close to telling the whole story. We now know that the stockpile of resources FEMA kept in Puerto Rico had been nearly exhausted on account of the need for them on the U.S. Virgin Islands and Florida in connection with Hurricane Irma. Report at 168. We also understand from FEMA's federal coordinating officer for Puerto Rico, Michael Byrne, that the need to ship things to Puerto Rico "add[ed] seven days or something longer to everything." Nicole Einbinder, *How the Response to Hurricane Maria Compared to Harvey and Irma*, PBS Frontline, May 1, 2018, <https://www.pbs.org/wgbh/frontline/article/how-the-response-to-hurricane-maria-compared-to-harvey-and-irma/>. In addition, we have always known that the number of people affected by Harvey and the area of devastation were simply larger than the number affected by Maria. The comparisons just don't make sense.

²⁰⁴⁵ In *Santos v. FEMA*, 327 F. Supp. 3d. 328, 342-43 (D. Mass. 2018), the court made a similar point. It stated that plaintiffs in that case "have cited to what they claim are 'stark differences' in FEMA's treatment of victims of Hurricanes Harvey and Irma versus its treatment of . . . victims of Hurricane Maria" as proof of discrimination. But, according to the court, their argument that Harvey victims received more financial assistance in the early phase of the recovery was undermined by the admitted differences in the size of the affected population and other differences between the hurricanes.

*government that went to Puerto Rico for Maria far exceeded the amount that went to Texas for Harvey.*²⁰⁴⁶ *That is an important part of the story.*²⁰⁴⁷

²⁰⁴⁶ See Statement of David Bibo, Jo Linda Johnson, and Tony Robinson (FEMA) at 2-3, 5. For Public Assistance (i.e., assistance to public entities for public works and infrastructure projects), more than ten times as much federal money was obligated for Maria than for Harvey or Irma (\$27,571,380,708.69 (Maria) versus \$2,506,341,969.53 (Harvey) and \$2,605,726,212.52 (Irma)). For individual assistance, the numbers favor Texas somewhat: \$1,656,898.380.50 (Harvey), \$1,336,691,744.06 (Maria-Puerto Rico) and \$44,112,249.83 (Maria-U.S. Virgin Islands), but this is more than outweighed by the difference in public assistance money.

At times, the Report seems to emphasize that the average amount given to individual homeowners was higher in Texas than in Puerto Rico. It would be surprising if this were not true. As the Report itself states repeatedly many homes in Puerto Rico are part of an “informal” economy. Very often these homes are small and not built according to code. Even by the standards of the homes of low-income Texans, these homes in Puerto Rico are very modest. *The federal government’s individual assistance program is not intended to allow homeowners to upgrade their homes. Homes are supposed to be restored to their previous condition, not a better one.* Since homes in Puerto Rico tend to be smaller and built of less expensive materials, restoring them to their previous condition is likely to cost less money.

²⁰⁴⁷ Commissioner Kladney accuses President Trump of having said that Puerto Rico received “too much money” from the federal government. *The quote itself is fake.* The newspaper article Commissioner Kladney cites uses those words, but it doesn’t say that Trump used them. In a behind-closed-doors discussion on Capitol Hill in 2019, Trump apparently did say something along the lines that Puerto Rico received an amount out of proportion to what Texas and Florida received. But given that it was allotted more than \$27 billion—over 10 times what Texas or Florida received in Public Assistance—it sounds like a true statement. See Statement of Commissioner David Kladney at 261. See also Nicole Acevedo, *Trump Administration Doubles Down on Opposition to Puerto Rico Funding, Drawing Criticism*, NBCNews.com, March 27, 2019, <https://www.nbcnews.com/news/latino/trump-administration-doubles-down-opposition-puerto-rico-funding-drawing-criticism-n988181>.

Trump’s concern seems to be that the federal government should not be providing funds that are supposed to be for emergencies to bail the government of Puerto Rico out of the bankruptcy of its public utility (which it owns). If that is what happened, he was, of course, right to be concerned. See Andrew Scurria, *Trump Attacks “Inept” Puerto Rico Leaders Over Disaster Aid*, Wall St. J., Oct 23, 2018, (Trump is “accusing [Puerto Rican leaders] of trying to funnel ‘ridiculously high’ levels of federal disaster assistance toward paying down a \$73 billion debt load”), https://www.wsj.com/articles/trump-attacks-inept-puerto-rico-leaders-over-disaster-aid-1540323746?mod=nwsrl_pro_bankruptcy_bankruptcy&cx_refModule=nwsrl.

Trump might also have been concerned that the federal government’s funds (or at least its disaster abatement funds) should not be used to *upgrade* Puerto Rico’s (or any other state’s or territory’s) public utilities. I am not an expert in financing public utilities, but that doesn’t sound like an inappropriate concern either. Assuming the federal government was not treating Puerto Rico worse than other similarly situated states or territories, it doesn’t seem outrageous to be concerned that Puerto Rico is being given money that is being used to upgrade the system rather than deal with the effects of the hurricane. To be sure, Puerto Rico is poorer than most states, and that is an argument for providing assistance even for non-disaster related needs. But West Virginia and Mississippi are poorer than most states too. I don’t know the extent to which, if any, that poorer states have received federal subsidies in building their power generation and distribution systems. I’d be surprised (though impressed) if anyone on the Commission or the staff does. Consequently, I doubt that anyone on the Commission (including me) is in a position to say that Trump was wrong to be concerned.

This discussion was held in 2019—long after the immediate crisis was over and long after Puerto Rico’s electrical grid had been restored to something approximating its condition prior to Hurricane Maria. By quoting this statement immediately after one made by Trump in September of 2017, Commissioner Kladney’s Statement may have caused some readers to think Trump said it at a time the need for further funding was obvious and critical. That is unfortunate.

***An Issue Worth Thinking About:
Enlisting Law Students to Help Formalize “Informal Title” for Low-Income Property Owners***

There is one more issue that deserves comment. The Report returns, again and again, to the issue of “informal land ownership.” Report at 7, 22, 52-53, 135-137, 159, 176-179, 197, 204, 224, 227-231. Apparently, many in Puerto Rico (and some on the mainland) do not hold formal title to the land that they believe (sometimes with justification) that they own. For example, sometimes land is inherited from a deceased parent, but no one takes the time or money to probate the estate in court and to have the property registered to the heirs. If this is indeed common, it is a real problem that needs to be remedied—quite apart from its effect on FEMA’s willingness to dispense federal benefits.

The Report describes the problem this way:

In the immediate aftermath, FEMA received over 1.1 million applications for individual housing assistance in Puerto Rico and had denied nearly 60 percent of those applications. According to testimony collected by the Commission, experts asserted that many of these denials were due to issues of providing proof of homeownership or occupancy. In Puerto Rico, it is estimated that as many as 55 percent of homeowners did not hold a title at the time of Hurricane María, and at least 77,000 applicants were denied FEMA assistance due to title documentation issues.²⁰⁴⁸ These denials were based on FEMA’s interpretation of a Stafford Act requirement that assistance be

²⁰⁴⁸ I wonder about these numbers. Clarification would have been useful. If the “1.1 million applications” refers to applications for home repair money (as one might expect given its placement in the paragraph) and if “up to 55%” of all homes are owned informally, one might expect more than 77,000 rejections due to title documentation issues. Of course, “up to 55%” can mean anything from 0% to 55%, and “at least 77,000” can mean anything from 77,000 to 1.1 million. Alternatively, the 77,000 rejections could refer to the rejections that were left after all the other applicants with title documentation issues managed to prove their ownership by other means. If it’s the latter, it means that the 77,000 were applicants who could not prove ownership even after the federal government gave them other options for how to do so. Hence the problem may be that they really didn’t own the property (and in some cases may even have been applying for benefits with fraudulent intent).

Commissioner Kladney accuses me of “baselessly” implying “that as many as 77,000 survivors seeking assistance from the federal government for housing assistance [sic] were attempting to commit fraud.” He hopes I am acting out of “ignorance” rather than “prejudice.” Rebuttal of Commissioner David Kladney at 351. He is misperceiving my point. Let me try again: If it’s true that 55% of Puerto Ricans don’t have formal title to their property, then one would expect a lot more than 77,000 out of 1.1 million applying for assistance would be unable to show formal title (if these are figures for home repair grants). That is only 7%. I therefore have to wonder what is going on. If only 77,000 were rejected on that ground, could it be that these rejections came after an opportunity to provide alternative proof of ownership and those applying for assistance were unable to provide even alternative proof? If so, the problem may not be excessive rigidity on the federal government’s part. It may be the applicant’s inability to show ownership no matter how hard the federal government tries to allow for alternative proof. At some point federal agencies have a responsibility to ensure that they don’t dole out taxpayer funds to ineligible recipients. Commissioner Kladney’s intemperate remarks don’t change that.

limited to “owner-occupied” residences; however, nothing in Puerto Rico’s laws or regulations require [sic] homeowners to register their properties.

Report at 7 (footnotes omitted).

Insofar as the Report is trying to imply that maybe the Stafford Act does not limit recovery to owner-occupiers, then it is simply wrong. It does so limit recovery.²⁰⁴⁹ More likely, the Report is trying to make the point that “nothing in Puerto Rico’s laws or regulations require homeowners to register their properties.” But while it may be true that Puerto Rico law does not “require” homeowners to register their properties, that doesn’t make Puerto Rican law any different from the law in any of the 50 states. It doesn’t follow from that that the federal government cannot require presentment of documented title. *Registered title is the standard way that ownership of real estate is proven.* Property owners who fail to register title cause a lot of unnecessary headaches to themselves and others.

Federal officials have a duty to ensure that only owner-occupiers receive benefits. Not everybody who claims to own land and who applies for government benefits in connection with that claim actually does own it. Fraud is not just a theoretical concept here.²⁰⁵⁰ Fraud is a fact (and so is honest error).²⁰⁵¹ So if the Report is trying to make the point that they would have been doing something contrary to law if they had required applicants to prove ownership through documented title, I would have to disagree. A federal agency should be given a reasonable amount of flexibility in determining what measures are appropriate in protecting the public purse against fraud or error.

²⁰⁴⁹ And it makes sense that it should. The federal government is not the insurer of last resort for all real estate investments. For most homeowners, their home is by far their most important asset; if they lose it, they have in some sense lost their future security. For the federal government to intervene to protect uninsured owner occupiers is not unreasonable. As much as we’d prefer all homeowners to purchase private insurance, not everyone can afford it. On the other hand, if property owners are lucky enough to have two homes or to own a rental property and they fail to secure private insurance, it is understandable that the federal government might give them much lower priority. Similarly, renters are not protected to the same extent as owner occupiers, since they can leave and rent another property.

²⁰⁵⁰ See, e.g., *11 People Charged with Fraudulently Applying, Receiving FEMA Benefits, According to Officials*, kplctv.com, July 22, 2021, <https://www.kplctv.com/2021/07/22/11-people-charged-with-fraudulently-applying-receiving-fema-benefits-according-officials/>.

²⁰⁵¹ “Land rescuers,” the delicate term the Report uses to refer to what are more commonly called squatters, are not owners unless and until they can establish such long tenure that they qualify for “adverse possession” or some analogous legal doctrine. Report at 136.

But let's put that aside. In any event, the appropriate federal officials have now determined that they can accept alternative methods of proof.²⁰⁵² The fact that some applicants can't show title is no longer the last word on whether they, in fact, own the property or whether they are entitled receive aid under the program. That's probably a good thing.²⁰⁵³

Nevertheless, these efforts to accept alternatives to documented title don't solve all the problems of "informal title." There are lots of other headaches created by the failure to hold formal title to land. No reasonable buyer is going to buy property from a seller unless she can be absolutely sure that the seller actually owns the property. No lender is going to lend money to a borrower secured by the property unless he can be dead certain the borrower owns the property. Similarly, contractors will balk at repairing or improving a property if they cannot be assured of an enforceable lien against the property to secure payment for their services. If the person with whom they are contracting turns out not to own the property, contractors can get burned.

The Peruvian economist Hernando de Soto has written extensively on the downsides of informal title and on the importance of clear and indisputable property rights.²⁰⁵⁴ He argues that part of the reason that more prosperous nations are, in fact, more prosperous than others is that they are more likely to keep orderly and accurate records of who owns what. Homeowners who can produce proof of ownership on demand can sell their home move to a place where jobs are more plentiful. Or, once the children are grown, they can sell their home and use part of the proceeds to buy a smaller home and the rest for living expenses. They can mortgage their home to start a business. Many possibilities open up.

De Soto has elaborated on this in an interview with Chris Arsenault, who wrote:

Providing the world's poor with titles for their land, homes and unregistered businesses would unlock \$9.3 trillion in assets, de Soto estimates, an unprecedented sum to reduce poverty. Property titles would allow the poor to use their small homes or land in order to borrow money and start businesses, he said, unlocking the entrepreneurial potential of billions of people.

²⁰⁵² Note, however, that there is rightly pressure on federal agencies to process applications as rapidly as they can. Applicants who can't show documented title make their applications more difficult to process. They are going to have to expect that their applications will take somewhat longer. It's shortsighted to expect federal agencies involved in disaster relief to speed things up and at the same time expect them to complicate their procedures by adding extra steps.

²⁰⁵³ I can't tell from the record whether I would have adopted exactly the approach that is now being taken. From my standpoint, it might be too lax, or it might be too strict. Here's hoping that the agencies involved have hit upon the Goldilocks standard of proof that is "just right."

²⁰⁵⁴ Hernando do Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (2001), <https://cdbg-dr.pr.gov/en/title-clearance/>.

“There is no such thing as an investment without property rights that are negotiable and transferable,” de Soto told the Thomson Reuters Foundation in a phone interview.²⁰⁵⁵

I therefore believe that Puerto Rico’s Title Clearance Program, established at least in part with HUD funding, is an excellent idea.²⁰⁵⁶ Designed to assist low-income homeowner who do not have documented title to their homes, this program is a step in the right direction. I’d like to see a lot more of this.

It strikes me that this could be a worthy project for a law school legal aid clinic not just in Puerto Rico but also in states in the Deep South where informal land holding is said to be common. Students at law schools and who are interested in practicing real estate law or probate law could benefit from such a clinic. Homeowners whose interest in their property is not properly documented would also benefit. It would allow them to sell, mortgage or remodel their home or to qualify more easily for repair benefits when the next hurricane comes along. State legislatures might even have reason to fund such a clinic.

Honor Roll

Too often in the wake of a disaster, we forget to thank those who deserve to be thanked. I don’t want to do that here. Of course, I can only thank those about whom I know, and, unfortunately, I only know about those who have been mentioned in the media. But let me at least recognize a few of those:

Adopt-a-Family USVI, All Hands and Hearts, the American Red Cross, Chef José Andrés and World Central Kitchen, Officer Ileana Aponte-Peña, the Army Corps of Engineers, Tom Brady, Susan Brock and her Meyerland volunteers, “the Cajun Navy,” Cane Bay Cares, Catholic Charities of the Archdiocese of New York, Catholic Charities USA, the Coast Guard, Sgt. Joe Collazo and his fellow members of the Martin County Sheriff’s Office, the Danish Red Cross, Maria Davila and Healthy Souls International, Rosie Dawson and her Carrot Bay friends, Juliette Ellis, Del Frisco’s Restaurant Group, Michael Dell and the Rebuild Texas Foundation, the

²⁰⁵⁵ Chris Arsenault, Property Rights for World’s Poor Could Unlock Trillions in “Dead Capital”: Economist, Thomson Reuters Foundation, July 31, 2016, <https://www.reuters.com/article/us-global-landrights-desoto/property-rights-for-worlds-poor-could-unlock-trillions-in-dead-capital-economist-idUSKCN10C1C1>.

²⁰⁵⁶ See Title Clearance Program, <https://cdbg-dr.pr.gov/en/title-clearance/>. See CDBG-DR Program Guidelines: Title Clearance Program, https://cdbg-dr.pr.gov/en/download/title-clearance-program/?ind=1590610774888&filename=HSN_TC_Guidelines_Program%20Guidelines_EN_v2.pdf&wpdmdl=6692&refresh=61e6df1aa94701642520346.

Fellsmere Police Department, the Finley Family, the Finnish Red Cross, the Florida National Guard, the Florida Presbyterian Disaster Assistance Network, Martha Ford, Luis Garay, Goya Foods, Inc., Tara Gower and the neighbors who formed a human chain to protect a woman in labor, Greater Houston Community Foundation, the H-E-B supermarket chain and its Department of Emergency Preparedness, Cody Hirt and his fellow members of Veterans Outdoors, the Honduras Red Cross, the Houston Police Department's Dive Team (including Glen and Alex Mayo), the International Red Cross and Red Crescent Movement, Jerry Jones, the Kentucky Air National Guard, Bob Kraft, José Lebron-Sanabria and the Knights of Columbus, Magen David Adom, the managers of Mattress One in Port St. Lucie, Marsha the Uber Driver, Toni McGann and the Red Rock Restaurant, Jim McIngvale a/k/a "Mattress Mac", Bob McNair, the Mexican Red Cross, Lin Manuel Miranda & family and the Unidos Disaster Relief and Recovery Program, the Puerto Rico National Guard, "the Puerto Rican Navy," Wayne and Shereeza Richards, Samaritan's Purse, Shell Oil, Guillermo Smith, the Spanish Red Cross, Stanley Black & Decker, Amy Adams Strunk, Team Rubicon, the Texas National Guard, teenager Virgil Smith who rescued 17 persons during Harvey, Albert & Andrew Stoutt, Thomas & Chassi, Keshia Thomas, Lt. Geoff Tuck, the U.S. Postal Service in Puerto Rico, the crew of the U.S.N.S. Comfort, United Way, UPS, Valero, Walmart and its Emergency Operations Center, J.J. Watt, Whataburger, World Vision ... and many more, including thousands of federal, state, territorial, and local government police officers, life guards, fire fighters and other employees, public utility workers, *and just plain good neighbors.*

It is out of their willingness to help when help is needed that our society is built.

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Rebuttal of Commissioner David Kladney

Rebuttal: When the Status Quo is Flawed, to be Complacent is to Surrender to Failure

By Commissioner David Kladney

Commissioners Heriot and Adams' statements were both shocking and disappointing. They leave many false impressions of the Commission's investigation, its Report, the expertise of the Commission staff, the survivors and victims of hurricanes Harvey and Maria, and FEMA's response to them.

There is a significant difference between unfairly disparaging an agency that fell short only because of the circumstances and doing what this Report does; pointing out the disparity between how Puerto Ricans were treated compared to their mainland counterparts in Texas, and identifying the groups of people in both communities that fell through the cracks. Constructive criticism should be taken for just that; constructive.

I would feel better if my conservative colleagues, Commissioners Heriot and Adams, had taken the time to explain the process of how a Commission report is developed. To the point, the first draft of the report is written by the Office of Civil Rights Evaluation after expert testimony, including from FEMA. Research is led by a social scientist with a Ph.D., whose staff is composed of four more Ph.D. and two assistants, all of which are trained in research in the social sciences. After the first report is drafted and reviewed for legal sufficiency by the Commission's Office of General Counsel (composed of lawyers), it is then distributed to all the Commissioners, including Commissioners Heriot and Adams, for input and correction. As a matter of fact, during the several draft process and several draft circulation opportunities, Commissioners Heriot and Adams did not once submit edits, corrections, or facts to counter those set out in the Report, such as the death counts from these hurricanes.

Also, FEMA reviewed the draft Report and were allowed to submit any facts or information that countered any information it considered erroneous. It suggested a few edits, but nothing that substantially changed the cited facts and figures contained in the Report.

Further, and importantly, the more you read their statements the more it becomes clear that the issue Commissioners Heriot and Adams have is not unfair criticism; it is that they seem to think that criticizing FEMA at all is unfair. For example, Commissioner Heriot states:

We are the U.S. Commission on Civil Rights. We are made up of seven civil rights lawyers and one businessman. We have a small staff to assist in drafting and editing reports. But that staff is mostly civil rights lawyers too, along with a few social scientists. No one connected to the Commission has any expertise in

handling emergencies of any kind. We are not the ones to put FEMA's or any other emergency service provider's performance under a microscope.²⁰⁵⁷

To the extent Commissioner Heriot is saying that we have no business telling FEMA *how* to do its job, I agree. We are not the experts in disaster response; it is. That is why this Report does not tell FEMA how to do its job, but points out that protecting the civil rights of disaster survivors is part of its job and tells it what issues it must address while leaving the how to the Agency.²⁰⁵⁸ But to the extent Commissioner Heriot is asking who are we to dare criticize FEMA, she need only look back on the first sentence of her above-quoted statement: we are the U.S. Commission on Civil Rights. It is not only our prerogative to investigate and comment on disparate treatment and discrimination in the administration of federal programs, it is our statutory duty. If Commissioner Heriot does not think it is the Commission's place to investigate and criticize FEMA for failing to adequately address the civil rights of affected persons in responding to these hurricanes, then it is Commissioner Heriot who does not understand the parameters of her position. Further, what is more perplexing is if she thinks not only the Report's findings but its goals and methodologies were all incorrect, why did she even vote to approve it at the July 2019 meeting?²⁰⁵⁹ Regardless, if Commissioner Heriot misunderstood the assignment and thus found this topic far outside her expertise, as her statement implies, that at least could partially explain why her office did not participate in giving feedback during the drafting of the Report.

Starting out with a bang, Commissioner Adams indicates that when the Commission produces a report with "some valuable and accurate aspects,"²⁰⁶⁰ he will vote for it. Given this extremely low standard, it is difficult to understand what Commissioner Adams finds so worthless or inaccurate about the Report. It cannot be the death toll or the Report's assessment that most deaths occurred in the aftermath of the hurricane rather than during the hurricane itself – that would put Commissioner Adams in the impossible position of arguing that the Report falsely exaggerates the scope and effects of hurricane María while at the same time asserting that the Federal government was powerless because of the scope of such a tremendous natural disaster. Yet, for those who may have not decided to read his 21-page statement, that is exactly what he does.

Commissioner Adams states the following:

²⁰⁵⁷ Commissioner Heriot's Statement at 6.

²⁰⁵⁸ For example, the Report points out that there existed inadequate facilities for persons with disabilities after the Hurricanes, as well as inadequate transportation for such individuals to centers that would be able to accommodate them. The Report does *not* advise FEMA to create a comprehensive bussing system, setting out regulations and a plan. However FEMA sees fit to address this issue so those with disabilities are not left out in the cold is sufficient.

²⁰⁵⁹ July 19, 2019 Business Meeting Tr. at 59, available at <https://www.usccr.gov/files/calendar/2019/07-19-Transcript-Commission-Business-Meeting.pdf>.

²⁰⁶⁰ Commissioner Adams' Statement at 1.

On page 20, the report mentions that if “indirect deaths” are counted Harvey may have caused more than 103 deaths. It is not until page 29 that the Report finally acknowledges that NOAA originally estimated Maria’s “direct death” toll at 65 – when it used the same historical standard used to calculate Harvey’s 68 “direct deaths.” Then the Report finally points out that NOAA updated its “official” death toll for Maria to 2,900 and the Puerto Rico governments’ official toll is 2,975 deaths.

One might ask the reasonable question, how did the death toll jump from 65 to 2,975, suddenly, a year after the storm?²⁰⁶¹

Commissioner Heriot, while seemingly admitting that likely more than 64²⁰⁶² people died, likewise cast doubt on the study done to reach that official figure.²⁰⁶³ She does not know what the real answer is mind you, she just wants to baselessly cast doubt on the studies that have arrived at higher death tolls so she can say, “no one really knows.”

Commissioner Adams, as he admits,²⁰⁶⁴ is not a statistician, and Commissioner Heriot might agree she is not one as well. The figure of 2,975 deaths from Maria was found after an independent peer-reviewed study.²⁰⁶⁵ Unless Commissioners Adams and Heriot have reason to believe that this number is false, inflated for dramatic effect, they should refrain from insulting the suffering of those who lost loved ones, as well as the researchers at The George Washington University, Harvard University, and others who undoubtedly know how to do their job better than Commissioners Heriot and Adams do.²⁰⁶⁶

Commissioner Adams points to the fact that 2017 presented FEMA with five level 1 disasters though the Agency had the capacity to handle only two as a way of excusing the inadequate federal response rather than for what it should be recognized as: a call to action. Our climate scientists and researchers have been warning us for years about the dangers of climate change. While we can certainly *hope* that 2017 will be an anomaly, data tells us that we will likely be facing natural disasters more frequently. Lacking the capacity to respond to more than two level 1 disasters in no way means that FEMA did not fail to adequately observe Americans’ civil rights during the response to hurricanes Maria and Harvey – indeed, it makes it more likely. What it does mean is that perhaps failure was all but inevitable because we did not properly provide the

²⁰⁶¹ *Id.* at 1-2.

²⁰⁶² Commissioner Heriot refers to 64 rather than 65 deaths.

²⁰⁶³ Commissioner Heriot’s Statement at 4-5.

²⁰⁶⁴ Commissioner Adams’ Statement at 2.

²⁰⁶⁵ Rick Jervis, *How Puerto Rico’s Hurricane Maria Death Toll of 3,000 was Calculated*, USA Today, <https://www.usatoday.com/story/news/2018/09/13/hurricane-maria-death-toll-study-george-washington-university-death-toll-donald-trump/1288908002/> (updated Sept. 14, 2018).

²⁰⁶⁶ See Sheri Fink, *Puerto Rico: How Do We Know 3,000 People Died as a result of Hurricane Maria?*, The New York Times, <https://www.nytimes.com/2018/06/02/us/puerto-rico-death-tolls.html> (Jun. 2, 2018).

Agency with the resources it needs to comply with its civil rights obligations. Rather than bury our heads in the sand and pretend a failure is not a failure, we should try and understand why such failures occur and take steps to address them. If Commissioner Adams is ready to admit that there were shortcomings in the Federal government's response and thinks those failures were, in part, due to lack of resources, I would be happy to join him in calling on Congress and the President to reevaluate disaster funding. It is certainly unfair to blame FEMA for failing to meet its obligations if one does not give the Agency the tools it needs to do so; but it is also important to recognize that this does not change the fact that failures occurred and acknowledge the consequences. Americans' civil rights do not and cannot rely on the balance in FEMA's operating account.

Commissioner Adams levels another criticism at the Report: the response to Puerto Rico was not worse than that of Texas because of any prejudice; it was because of political status.²⁰⁶⁷ In this way, he sounds like one of those bad middle school history teachers many of us have experienced. "The Civil War was not about slavery, but states' rights." Sure it was. The right of states to own slaves. Once one examines the history of how Puerto Ricans have been treated by the United States, including language from the Insular Cases describing the island as full of "alien races" and "savages" that do not understand "Anglo-Saxon" principles,²⁰⁶⁸ it becomes all too clear that, as always, the race, color, and national origin of a people is always taken into account when assigning their political status and value.

Now, Commissioner Adams is correct that the Report could have focused more in depth on the role Puerto Rico's political status played in complicating disaster response; and to the extent that this is the criticism he hoped to communicate, that is a valid concern. But we must not ignore or attempt to distract from the other considerations that come into play – especially those directly relevant to our Commission's jurisdiction – race, disability, color, and national origin – so we can focus on issues, though important, that do not fall squarely within our purview.²⁰⁶⁹

Part of Commissioner Heriot's reasoning for why she concludes that it is not likely the Federal Government's response was less "energetic[] in Puerto Rico on account of the color, race, or national origin of its inhabitants"²⁰⁷⁰ is that, if the federal government's goal was to discriminate against Hispanics, she thinks there was a more efficient way to do it. Texas, she says, has 11.5 million Hispanics; Puerto Rico only 3.3 million.²⁰⁷¹ If the Federal government really wanted to discriminate, she argues it would have drug its heels in Texas rather than Puerto Rico. Assuming her flawed premise that discrimination requires efficiency and ignoring the fact that Texas'

²⁰⁶⁷ Commissioner Adams' Statement at 1 & 18.

²⁰⁶⁸ See *Downes v. Bidwell*, 182 U.S. 244 (1901).

²⁰⁶⁹ See 42 U.S.C. 1975a.

²⁰⁷⁰ Commissioner Heriot's Statement at 11.

²⁰⁷¹ *Id.*

population is 40.2% Hispanic²⁰⁷² and Puerto Rico's population is 98.7% Hispanic,²⁰⁷³ she later admits that the area of Texas primarily impacted by Harvey, Harris County, has 2 million people who are Hispanic, making her claims incorrect no matter how one does the math. But again, we Commissioners are not statisticians; which is why one should rely on expert researchers rather than hunches from Commissioners in our statements (including my own) to collect facts.

Commissioner Heriot spends a significant portion of her statement discussing the differences between the part of Texas affected by Harvey and Puerto Rico.²⁰⁷⁴ This would be fair and appropriate if she was not using the differences as a way of dismissing issues with the Federal government's response to Puerto Rico. What one has to keep in mind is, that while each disaster is different, FEMA's legal obligations owed to Americans, Puerto Ricans and Texans, are the same. Thus, accepting Commissioner Heriot's premise, that practical concerns, such as the power grid, made FEMA's job much more difficult in Puerto Rico than in Texas, it only makes sense that FEMA would struggle more to meet its obligations to Puerto Ricans. Indeed, though Commissioners Heriot and Adams make many excuses for FEMA's failures, they seem to reject what an excuse fundamentally is; an explanation put forward to defend a fault or offense.²⁰⁷⁵ Thus, the fact that they are making excuses is necessarily a concession that failures occurred.

As Commissioner Adegible said in his statement, "[t]he purpose of this report was not to unduly criticize FEMA's natural disaster efforts [that] [] aris[e] in difficult circumstances; rather it is meant as an examination about the barriers and challenges the [A]gency and its partners faced when providing much needed aid to survivors."²⁰⁷⁶ Those working at FEMA chose public service; they want to get better at their job so that they can help more people. They understand that responding to natural disasters will always involve heightened emotions, difficult situations to overcome, and that seemingly trivial logistical issues can result in the loss of life. This is why it has internally produced reports identifying failures and is taking steps to rectify them.²⁰⁷⁷ This is why this Commission has produced this Report, to help identify failures in attending to survivors' civil rights and making recommendations so they can be corrected. Commissioners Heriot and Adams should not stand in the way of both FEMA and this Commission wanting the Agency to get better at its job.

The reason why Commissioners Adams and Heriot are determined to avoid any criticism of the Federal Government's response and shift the conversation to blaming the Puerto Rican government becomes more clear when Commissioner Adams gives the following statement:

²⁰⁷² *Quick Facts, Texas*, U.S. Census Bureau, <https://www.census.gov/quickfacts/TX>.

²⁰⁷³ *QuickFacts, Puerto Rico*, U.S. census Bureau, <https://www.census.gov/quickfacts/PR>.

²⁰⁷⁴ See Commissioner Heriot's Statement at 12-18.

²⁰⁷⁵ "Excuse" definition, Noun Definition one, Oxford Languages.

²⁰⁷⁶ Commissioner Adegible's Statement at 6.

²⁰⁷⁷ See Laura Sullivan & Emma Schwartz, *FEMA Report Acknowledges Failures In Puerto Rico Disaster Response*, NPR, <https://www.npr.org/2018/07/13/628861808/fema-report-acknowledges-failures-in-puerto-rico-disaster-response> (July 13, 2018).

This ‘limited preparedness’ occurred on a watch that was wholly within the control of the Puerto Rican government, not some far-away political appointee in the Trump administration. This failure to prepare had nothing to do with Trump, or racism, or FEMA policy. It had to do with homegrown failures. This Commission should not lend a hand in obscuring rightful local blame for failure to prepare for a disaster within numerous entities – whether public power or territorial disaster relief plans.²⁰⁷⁸

There is our answer. The Federal Government could not possibly have failed to do anything because Trump was President at the time and Trump does not fail. This statement, of course, is not true, as FEMA itself has acknowledged that there were multiple failures in its preparedness and responses to the hurricanes.²⁰⁷⁹ As for his statement that the Commission “should not lend a hand in obscuring rightful local blame,” the Report’s language, and commissioner statements have acknowledged the failures of the Puerto Rican government that helped make Maria the disaster it was.²⁰⁸⁰ The reason the Report and, speaking for myself, I have not made criticism of the Puerto Rican government my primary focus is because it is FEMA, not the government of Puerto Rico, that is responsible for national disaster response, and the Report, as the name implies, is about the *Federal* response to Hurricanes Maria and Harvey. Commissioner Adams’ criticism is like complaining that a course on world history only dedicated one class period to covering the French Revolution.

Commissioner Adams continues, explaining to us that not only did FEMA (and by extension, former President Trump) not fail in its response to hurricane Maria but “the Trump administration should be commended for adapting and improvising emergency solutions to the astounding problems faced on the ground, 1000 miles away from the American mainland.”²⁰⁸¹ And thus a lack of preparedness is turned into a triumphant story of ingenuity. Commissioner Adams’ statement is beginning to read a lot like President Trump’s excuse for the inadequacy of the federal government’s response: “The response and recovery effort probably has never been seen for something like this ... [t]his is an island surrounded by water, big water, ocean water.”²⁰⁸² It is worth noting that Hawaii is over 2,200 miles away from the mainland and Alaska is over 1,500 miles from the lower forty-eight.

²⁰⁷⁸ Commissioner Adams’ Statement at 4-5.

²⁰⁷⁹ See *supra* note 25.

²⁰⁸⁰ See, e.g. Report at 177; Commissioner Yaki’s Statement at 10; and Commissioner Kladney’s Statement at 3.

²⁰⁸¹ Commissioner Adams’ Statement at 6.

²⁰⁸² Jordan Faiban, Trump says Puerto Rico relief hampered by ‘big water, ocean water,’ The Hill, <https://thehill.com/homenews/administration/353094-trump-says-puerto-rico-relief-hampered-by-big-water-ocean-water> (Sept 29, 2017).

Commissioner Adams claims that “Federal courts have supported the logic in the dissent,”²⁰⁸³ that discrimination had nothing to do with the slower response to Maria, but that is a gross overstatement. If there is logic in his dissent, it is certainly not supported by either of the cases to which he cites. As an initial matter, the two cases to which Commissioner Adams cites for support are really one case. The substantive order denying plaintiffs’ requests for preliminary injunctions, dated August 30, 2018, is identical no matter which case name one uses, and concern the same issues and same parties in front of the same judge.²⁰⁸⁴ That clarification made, the court denied plaintiffs’ motions for preliminary injunction because it concluded that they had not demonstrated that they were likely to win on the merits of their claim of discrimination when they had not provided sufficient facts to establish that they, as survivors of Maria, were similarly situated to survivors of Harvey, and that the differences in the aid provided to them could not be explained by factors other than discrimination.²⁰⁸⁵ In other words, the court reviewed plaintiffs’ case and said, “even if there were differences in the aid you were provided, you have not given the court enough to find that it was a result of intentional discrimination.” But concluding that one has not given the court enough for it to let a claim of *intentional* discrimination progress is a very different thing than a court affirmatively holding that prejudice and/or discrimination had nothing to do with the delay or shortfall in FEMA’s response and that differences in aid could all be explained by other logistical factors, as Commissioner Adams claimed these “cases” (really one case) said. Perhaps he simply poorly worded his statement. Either way, as a fellow attorney, I advise him to take pains to avoid incorrectly articulating a court’s holding, if only to guard against people thinking that he is trying to mislead or deceive.

Commissioner Adams’ claim that granting Puerto Ricans housing assistance when they are unable to provide deeds is a violation of the Stafford Act can be dismissed quickly, as it is as ridiculous as it is false.²⁰⁸⁶ FEMA denied thousands of Puerto Ricans repair/replacement compensation for their home despite the Stafford Act having no requirement for deeds to show ownership for the Individual and Households Program.²⁰⁸⁷ Indeed, FEMA acted contrary to its own Program guide (which predated both Harvey and Maria), which allowed for the use of alternative proof of ownership.²⁰⁸⁸ Thus, as Commissioner Adams knows (or should know – he

²⁰⁸³ Commissioner Adams’ Statement at 11.

²⁰⁸⁴ Compare Order denying preliminary injunctions, *Asencio v. Federal Emergency Mgmt. Agency*, 4:18-cv-40111, ECF No. 67 (Aug. 30, 2018) with *Santos v. Fed. Emergency Mgmt. Agency*, 327 F. Supp. 3d 328, 333 (D. Mass. 2018)..

²⁰⁸⁵ See *Santos v. Fed. Emergency Mgmt. Agency*, 327 F. Supp. 3d 328, 342 (D.Mass 2018)

²⁰⁸⁶ Commissioner Adams’ Statement at 14 (“Should taxpayers in places like Tulsa, Kenosha and Allentown be required to financially support this ‘informal housing sector’ by ignoring the Stafford Act requirements . . .”

²⁰⁸⁷ See Ivis Garcia, Ownership in Puerto Rico is Crippling Repairs in the Aftermath of Hurricane Maria, ABA Human Rights Magazine, vol.44 No.2 Housing,

https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/vol--44--no-2--housing/the-lack-of-proof-of-ownership-in-puerto-rico-is-crippling-repai/ (May 21, 2021).

²⁰⁸⁸ See Individual and Households Program Unified Guidance, FEMA, FEMA Individuals and Households Program Unified Guidance at 17-18 (Sept. 30, 2016).

was there for the first part of the briefing in Puerto Rico), no one is suggesting that the Federal government give out benefits to those who cannot prove home ownership; the issue was FEMA requiring deeds and perfect title to approve benefits and denying all other claims when its own guide for the Program provides for alternate ways for survivors to prove ownership.

While spreading baseless accusations that this Report supports handing out federal housing assistance to survivors without any proof of home ownership, Commissioner Adams states that we should “ask the millions of taxpayers which side they fall on here.”²⁰⁸⁹ Commissioner Adams’ statement is flooded with this language of division. This same sense of division is what led to these issues in the first place. When people do not see Puerto Ricans as “real Americans” they fail to treat them as such. Commissioner Adams does not want to ask all taxpayers – including those in Puerto Rico, what they think; he wants to ask those in “Tulsa, Kenosha and Allentown” what they think of giving aid to Puerto Ricans.²⁰⁹⁰ But when disaster strikes, people’s homes are destroyed, and they are left without clean water, power, food or medical equipment – what does he want to do? Prioritize those who pay more in taxes first? We are all Americans. We should act like it.

Perhaps the most amazing part of Commissioner Heriot’s statement, titled, “Have Mercy,” is the utter lack of it for the actual survivors of these hurricanes. In her words, FEMA personnel are “mere mortals” who make mistakes, not only worthy but entitled to our grace, while she implies survivors do not “have the gift of wisdom to say ‘thank you’”²⁰⁹¹ and be grateful for what they got, accuses their advocates of “whining”²⁰⁹² when they criticize the federal response, and baselessly implies that as many as 77,000 survivors seeking assistance from the federal government for housing assistance were attempting to commit fraud.²⁰⁹³ I sincerely hope such statements were made out of ignorance rather than prejudice. She does not provide one fact to support her accusations . . . only mere speculation to create further the wedge of division.

Conclusion:

If the statements of Commissioners Heriot and Adams sound similar, it is because they are. For his part, Commissioner Adams indicates that the Report “infers that bureaucracies can solve calamities associated with an Act of God.”²⁰⁹⁴ Commissioner Heriot, similarly, indicates that, in

²⁰⁸⁹ Commissioner Adams’ Statement at 17.

²⁰⁹⁰ *Id.* at 14. Perhaps Commissioner Adams wants to ask taxpayers in the Territories and other states if they wish to send aid to those affected by the recent flooding in Kentucky and Texas, or the fires in Nevada, California, and Idaho.

²⁰⁹¹ Commissioner Heriot’s Statement at 1.

²⁰⁹² *Id.* at 3.

²⁰⁹³ *Id.* at 20, n. 44.

²⁰⁹⁴ Commissioner Adams’ Statement at 1.

the face of these “killers,”²⁰⁹⁵ we should just “feel lucky that things did not come out worse.”²⁰⁹⁶ The message is clear: we can’t criticize the Federal government for failing to adequately prepare, respond, plan, or train the personnel in local jurisdictions. These were catastrophic hurricanes and in the face of them, we are powerless.

It is true that hurricanes Maria and Harvey were catastrophic; it is also true that Puerto Rico’s geography as an island made disaster response more logistically challenging than responding to Texas. It is simply just un-American for us to let that be an excuse and refuse to recognize our failures and commit to doing better. This country is not about rolling over or tapping out when things get hard; it is about always striving to rise to the challenge and overcome. We keep trying to do better because instead of the 68 of people who died in Texas or the 3000 who died in Puerto Rico, those numbers could have been lower – even if only by one. We try because the chaos and suffering created by such disasters has the ability to destroy homes, tear apart families, and leave a person with diabetes without insulin. We try because the better we prepare and respond to disasters, the more we can guard against the economic effects of such disasters. We try because treating people equally regardless of their race, their disability, their national origin, and their language is part of the promise we have been struggling to realize for the entire breadth of this nation’s existence. We try because we are the United States of America and that is what we do. We are “the shining city upon the hill.”²⁰⁹⁷ I fundamentally reject the proposition, promoted by Commissioners Heriot and Adams, that if perfection is impossible, one must be content with what they have. We will not better disaster response in this country with that point of view. We should strive for better – always better, with the hope that, each time, we will make progress. Because that is what America is; not a promise of perfection, but a commitment to always try and improve.

Commissioner Heriot communicates what she believes to be a fundamental difference between the progressive and conservative mindset: progressives, she says, are so confident in the government’s ability to solve problems, no matter how great or small, that they are unfair to those who lead disaster response efforts that will, inevitably come below their expectations.²⁰⁹⁸ Conservatives, by contrast, are just happy that things were not worse.²⁰⁹⁹ While I cannot say I hold the belief that the answer to every problem is government, or that government can solve any issue even if it was appropriate for it to do so, I am a lot more comfortable being classified as a person who expects more and is disappointed than a person who thinks the status quo is fine because it could be worse. We are better than that. People who expect more and hold others to

²⁰⁹⁵ Commissioner Heriot’s Statement at 4.

²⁰⁹⁶ *Id.* at 1.

²⁰⁹⁷ Ronald Reagan, *Transcript of Reagan’s Farewell Address to American People*, The New York Times, <https://www.nytimes.com/1989/01/12/news/transcript-of-reagan-s-farewell-address-to-american-people.html> (Jan. 12, 1989, last accessed Aug. 23, 2022).

²⁰⁹⁸ Commissioner Heriot’s Statements at 1.

²⁰⁹⁹ *Id.*

that expectation may very well experience failure – many failures, but that desire for better will drive them to continue to improve and make adjustments. In contrast, a person who thinks, “I should be grateful because it could be worse,” will wallow in complacency, excusing inadequate performance because, hey, it could be worse. Thank God that most Americans strive for progress instead of take Commissioner Heriot’s “conservative” approach. The civil rights of every non-White male property-owning citizen of this country are built on people who refused to be satisfied with the status quo.

The only thing ignoring a problem does is ensure that it will continue to exist. FEMA appears to have taken steps toward self-accountability and progress; we should all be heartened the Agency has not taken Commissioners Heriot and Adams’ invitation to make excuses and choose complacency rather than adapt and learn.

Surrebuttal of Commissioner Adams

Commissioner Kladney took the time to make a series of quibbles to my dissent that were so limp that the quibbles aren't worth particular responses. Nevertheless, I address one of his quibbles that links my dissent with a historical fallacy cited by Lost Cause advocates.

I am referring to Commissioner Kladney's summary of my very clear and unambiguous comments that the *political status* of Puerto Rico may explain many of the shortcomings of Hurricane Maria response. My dissent noted that political status – namely the lack of full representation and statehood – played a much bigger role in any FEMA shortcomings than did rank racism.

Had Commissioner Kladney read more carefully, my plain description of the territorial relationship may explain, in my view and in the testimony of multiple witnesses, more about the turn of events after Hurricane Maria than racial discrimination.

For good measure, Commissioner Kladney lumped my dissent into the century-old word choices in the Supreme Court's Insular Cases, with his incantation of "savages" and other obsolete adjectives and characterizations that are found in that Supreme Court opinion. Commissioner Kladney failed to account, perhaps not surprisingly for doing so may have spoiled his desired effect, that the Insular Cases are still good law.

Commissioner Kladney next conjures the "bad middle school history teacher," maybe again to cast my lot in with this mythical repugnant teacher. His "bad middle school history teacher" was intent on teaching that the Civil War was "not about slavery" and instead was about "states' rights."

I never encountered this "bad middle school history teacher" who taught the Lost Cause nonsense that Commissioner Kladney describes.

I had quite a different middle school history teacher. In fact, so different, Commissioner Kladney's quibble offers an opportunity to give long overdue credit to one particular fantastic middle school history teacher – Mr. LaRoyal Wilson.

Mr. Wilson was the finest teacher I had, not only in middle school, but also in high school, college and through law school. His teaching about the Civil War was very different than the one proffered by Commissioner Kladney's fabled Lost Cause history teacher.

Mr. Wilson, who referred to me as "Quincy," required us to recite, on the stage before the school, from memory, the name of every American President in order. We also had to memorize and recite Longfellow's *Midnight Ride of Paul Revere*. Mr. Wilson enchanted us with the

history of the American Revolution, the Founders and what separated America from what came before it.

If we had 3,000 LaRoyal Wilsons teaching history in American middle schools, we would not have so many Americans ignorant of American history and clumsy with their quibbles.

Mr. Wilson taught that the Civil War was about something far more complex than “states rights.” To the contrary, Mr. Wilson did something I suspect no teacher would have the guts to do in 2022. He divided the essentially all-white Pennsylvania classroom between free and slave, and conducted a slave auction. The student-slaves were demeaned and dehumanized in a variety of ways, and were forced to be at the beck and call of their fellow student-masters who had purchased them for the day. This was in 8th grade.

LaRoyal Wilson made sure that we participated in the dehumanizing mechanics surrounding the slave trade. For sure, there was an incalculable difference in degree between historical fact and recreated theatre, but the lesson was conducted with bidding, labor, and master-servant subservience if for only one day, and only in the fictional venue of an American middle school in 1982.

Mr. Wilson is black. His very-good-middle-school-history class left an impression on me that has not abated, though I have no idea whether he is alive, teaching or otherwise. I have never encountered Commissioner Kladney’s fabled “bad middle school history teacher” because I had Mr. LaRoyal Wilson for middle school history.

The Civil War was certainly about slavery and how far it would be extended. But the Civil War also brought the hard-won gains in civil rights that followed, such as the enactment of the 13th and 15th Amendments. I still bring lawsuits under the latter amendment to protect the voting rights of Americans of all races. I probably wouldn’t have become a lawyer if not for Mr. LaRoyal Wilson, a very good middle school history teacher.

So Commissioner Kladney’s quibble that cited Lost Cause nonsense was nowhere to be found in my dissent, and neither should any reader of his commentary believe otherwise.

Surrebuttal of Commissioner Michael Yaki

PREAMBLE

To those who know me well – and to those who do not – I do not like and have never supported the concept of rebuttals, much less surrebuttals. If you cannot muster your best arguments – pro or con -- in a statement on a record that you have been exposed to for almost a year, including numerous drafts for review, I do not understand what the point of writing a statement is for in the first place. Instead, we waste valuable staff time and resources, often in service of the insecurities of individuals who lack the confidence of their positions.²¹⁰⁰

However, the unfounded accusations and criticism by some of my colleagues compels me to respond, however briefly. To that end, I join the Rebuttal filed by my colleague, Commissioner David Kladney, which answers in full their empty allegations, and submit this short statement.

STATEMENT

By the time this is published, 5 years will have passed since Hurricane Maria vented its fury on Puerto Rico.

It took 11 months to restore full power to the island.²¹⁰¹ In the meantime, tens of thousands of Puerto Ricans had fled to the mainland because of the atrocious living conditions that continued long after the ships and planes and emergency personnel had left.²¹⁰²

²¹⁰⁰ The history of this is rooted in pettiness. My colleagues at the time, who realized that my dissents to their reports were longer and more detailed in my analysis than their own, first instituted the policy of rebuttals so they could try to answer my critiques. When I decided not to file a dissent but waited to file a rebuttal as my formal statement, they realized that I had denied them the chance to respond – again. Thus, the surrebuttal was born, another, late, whack-a-mole desperate attempt to try to cover their weak reasoning and faulty conclusions that I would happily highlight in my statements. Again, an issue that could all be solved by putting, as it were, the best foot forward – in the original statement. But sometimes when the facts and law are not on your side, all you have are desperate attacks to try to buttress the shifting sand of weak reports put forward by my then-colleagues.

²¹⁰¹ Alexia Fernandez Campbell, “It took 11 months to restore power to Puerto Rico after Hurricane Maria. A similar crisis could happen again.” Vox, August 15, 2018, <https://www.vox.com/identities/2018/8/15/17692414/puerto-rico-power-electricity-restored-hurricane-maria>.

²¹⁰² Jason Schachter, Antonio Bruce, “Estimating Puerto Rico’s Population After Hurricane Maria: Revising Methods to Better Reflect the Impact of Disaster,” U.S. Census Bureau, August 19, 2020, <https://www.census.gov/library/stories/2020/08/estimating-puerto-rico-population-after-hurricane-maria.html>.

Less than a year ago, on our field visit to island, we visited communities with still-open wounds caused by its Category 4 winds.²¹⁰³

My colleagues who assert that the federal government was overwhelmed, or that the Puerto Rican government is to blame, should ask themselves: would the federal government take 11 months to restore power to Manhattan? Would there be homes with blue tarps – with people living in them – in the Richmond district of San Francisco?²¹⁰⁴

The report speaks for itself – loudly. We saw that in Black neighborhoods of Houston, the poor get poorer but the white neighborhoods improve in value as federal monies are disproportionately distributed. But for Puerto Rico, it was far, far worse.

Within days, over 70 helicopters were flying over Houston rendering aid and assistance. It took three weeks for a similar number of helicopters to reach Puerto Rico. Contrary to the intimations of some of my colleagues, it does not take three weeks to transport helicopters to Puerto Rico. In 9 days, over \$141 million in aid had been distributed to victims of Hurricane Harvey, while in the same time period, only \$6.2 million in Puerto Rico to victims of Hurricane Maria. In 9 days, 20,000 tarps were distributed in the Harvey area, but only 5,000 in Puerto Rico. In 9 days, 30,000 federal personnel were on the ground in Houston, but on an island where the infrastructure was in ruins and the need for people on the ground was enormous – only 10,000 after 9 days.²¹⁰⁵

In San Juan, people died because the island’s medical infrastructure lies damaged and powerless while the FEMA command center was air conditioned.²¹⁰⁶

In Houston, the now former President announced he donated a million dollars to charity. In San Juan, he opened his visit by remarking that “you’ve thrown our budget out of whack.”²¹⁰⁷

²¹⁰³ “Maria was a very severe Cape Verde Hurricane that savaged the island of Dominica at category 5 (on the Saffir-Simpson Hurricane Wind Scale) intensity, and later devastated Puerto Rico as a high-end category 4 hurricane.” Richard J. Pasch, Andrew B. Penny, Robbie, Berg, “Hurricane Maria,” National Hurricane Center Tropical Cyclone Report, February 14, 2017, https://www.nhc.noaa.gov/data/tcr/AL152017_Maria.pdf.

²¹⁰⁴ It may remind some of my colleagues of prior disparities in relief efforts – for example, how the predominantly black lower Ninth Ward of New Orleans continues to suffer the effects of Hurricane Katrina. *See, e.g.*, John Simerman, “New Orleans’ 9th Ward is Still Reeling from Hurricane Katrina’s Damage 15 Years Later,” NOLA.com, August 29, 2020, https://www.nola.com/news/katrina/article_a192c350-ea0e-11ea-a863-2bc584f57987.html.

²¹⁰⁵ Danny Vinik, “How Trump favored Texas over Puerto Rico,” Politico, March 27, 2018, <https://www.politico.com/story/2018/03/27/donald-trump-fema-hurricane-maria-response-480557>.

²¹⁰⁶ Karl Vick, “A Land They No Longer Recognize: Desperation and Resilience in Hurricane-Battered Puerto Rico,” Time, October 6, 2017, <https://time.com/a-land-they-no-longer-recognize/>.

²¹⁰⁷ Christina Wilkie, “Trump to Puerto Rico: ‘You’ve thrown our budget out of whack,’” CNBC, October 3, 2017, <https://www.cnbc.com/2017/10/03/trump-puerto-rico-budget.html>.

These are just facts. They are not rooted in anything but facts. And they are facts that some of my colleagues choose to ignore, as they choose to ignore the fact that if you are a disaster victim and you are black, or Latino, or from Puerto Rico, your odds of receiving aid on par with that of a white person are markedly less.²¹⁰⁸ And especially if you were a victim in Puerto Rico, it is difficult to draw any conclusion other than you were treated as a second-class citizen, a mere resident of a colony of lesser rank to a state, despite the fact that you are a citizen of the United States.

This is exactly why this report is within the jurisdiction of the United States Commission on Civil Rights.

I want again to thank the staff for their great work on this report, and to the people of Houston and Puerto Rico for their warmth, support, and above all, their resilience in the face of institutional and structural inequity. We hope that this report and its recommendations will be acted upon by the President, the Department of Homeland Security, and the Congress. The people of Houston and, especially the people of Puerto Rico, deserve no less.

²¹⁰⁸ To my colleague who accused me being irrational in my critique of the former President – despite ample evidence, demonstrated above and in my statement, of the former President’s bias against the people of Puerto Rico -- I would note that, by contrast, I have never been called out in a Congressional hearing for my views. *See* Mark Joseph Stern, Slate, May 27, 2016, “Congresswoman Slams Anti-Trans Activist During Hearing: ‘You’re a Bigot, Lady!’,” <https://slate.com/human-interest/2016/05/rep-zoe-lofgren-tells-gail-heriot-shes-a-transphobic-bigot.html>.

Appendix A Federal Response to Hurricanes María and Harvey



U.S. Commission on Civil Rights Public Briefing: Federal Response to Hurricanes María and Harvey: Civil Rights and Protections Following a Natural Disaster

Friday, June 25, 2021
Expert Panels: 12:00 pm – 2:55 pm ET

AGENDA

Live-streamed: <https://www.youtube.com/user/USCCR/videos>

- I. **Introductory Remarks by Chair Norma V. Cantú and Commissioners Debo Adegbile and Michael Yaki:** 12:00 – 12:07 pm
- II. **Panel 1:** 12:07 – 1:32 pm
 - David Bibo, Acting Assoc. Administrator, Response & Recovery, FEMA
 - Tony Robinson, Region 6 Administrator, FEMA
 - Glenn Sklar, Principal Deputy Inspector General, DHS OIG
 - Stephen Begg, Deputy Inspector General, HUD OIG
 - Chris Currie, Director, Homeland Security & Justice, USGAO
 - Tevi Troy, Author, BPC Senior Fellow, & Former HHS Deputy Secretary
 - Jo Linda Johnson, Director, Office of Equal Rights, FEMA
- III. **Break:** 1:32 – 1:42 pm
- IV. **Panel 2:** 1:42 – 2:48 pm
 - Kira Romero-Craft, Director of the Southeast Region for LatinoJustice PRLDEF, LatinoJustice
 - Andrés Gallegos, Chairman, National Council on Disability
 - Nicole Roy, Project Coordinator, Salvation Army
 - Charley Willison, Postdoctoral Fellow, Harvard Medical School
- V. **Closing Remarks by Chair Norma V. Cantú:** 2:48 – 2:55 pm
- VI. **Adjourn Meeting**

**Public Comments will be written testimony only

U.S. COMMISSION ON CIVIL RIGHTS

+ + + + +

VIRTUAL BRIEFING

+ + + + +

FRIDAY, JUNE 25, 2021

+ + + + +

The Commission convened via
teleconference at 12:00 p.m. EDT, Norma Cantu,
Chair, presiding.

PRESENT:

NORMA V. CANTU, Chair

J. CHRISTIAN ADAMS, Commissioner

STEPHEN GILCHRIST, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

DAVID GANZ, General Counsel

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STAFF PRESENT:

NICK BAIR

PAMELA DUNSTON, Chief ASCD

GERALD FOSTEN

ALFREDA GREENE

JULIE GRIECO

MICHELE RAMEY

ANGELIA RORISON

MARIK XAVIER-BRIER

COMMISSIONER ASSISTANTS PRESENT:

ALEC DUELL

JOHN MASHBURN

CARISSA MULDER

AMY ROYCE

JUANA SILVERIO

THOMAS SIMUEL

IRENA VIDULOVIC

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P R O C E E D I N G S

(12:02 p.m.)

CHAIR CANTU: Commissioners virtually present at this briefing in addition to me are Commissioner Adams, Commissioner Gilchrist, Commissioner Heriot, Commissioner Kirsanow, Commissioner Kladney and Commissioner Yaki. A quorum of Commissioners is present. I note for the record that the Staff Director and the court reporter are present.

I. INTRODUCTORY REMARKS BY CHAIR NORMA V. CANTU AND

COMMISSIONERS DAVID KLADNEY

AND MICHAEL YAKI

I look forward to our briefing today and note that the Commission business meeting scheduled for this afternoon following this briefing has been cancelled so we do not have a further meeting for the Commissioners to attend.

My name is Norma Cantu, and I am Chair. And I wish to welcome everyone to this briefing on the civil rights in the federal response to Hurricane Maria and Harvey.

The Commission undertook this project knowing full well that the Congress was already reviewing the federal responses to natural disasters.

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1 However, we'll be looking at the response through a
2 civil rights lens.

3 The Commission will review Federal
4 Emergency Management Agency, FEMA, in its role in
5 disaster preparedness and response. We'll be looking
6 to evaluate efforts by FEMA to comply with the Robert
7 T. Stafford Disaster Relief and Emergency Act along
8 with other federal civil rights laws and policies.

9 And our Commission will compare the
10 significant hurricane systems to Hurricanes Harvey
11 and Maria.

12 Commissioners will hear from subject
13 matter experts such as government officials,
14 academics, advocates and impacted persons.

15 First, we will begin with a few
16 housekeeping items. I share deep thanks to the
17 Commission's staff who researched and brought today's
18 briefing into being including the teams who have
19 worked on logistics, which this virtual environment
20 presents a whole host of additional challenges. And
21 I thank Staff Director Morales for his leadership.

22 I caution all speakers, including our
23 Commissioners, to refrain from speaking over each
24 other for the ease of the transcription by the court
25 reporter.

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1 Additionally, I will need to cue our
2 staff behind the scenes for the appropriate video and
3 audio support. So occasionally, you'll hear a phone
4 ringing and that's probably for me and not for you.
5 So please wait to speak until I've called upon you.

6 During the briefing, each panelist will
7 have seven minutes to speak, and you'll see on the
8 top of your gallery screen you'll see the seven
9 minutes counting down.

10 The panelists after they speak, then the
11 Commissioners will have an opportunity to ask
12 questions within the allotted period of time.

13 Now that depends upon how long the folks
14 take to present. It depends upon how many questions
15 people ask. I would urge folks to get your most
16 important question out first because I'm doing some
17 math here and 11 panelists times 7 minutes each,
18 that's already an hour and a half there.

19 So we're going to finish on time. So I
20 will strictly enforce the time allotment given to
21 each panelist to present his and her statement. And
22 unless we didn't receive your testimony until today,
23 you can assume that we have read your statements. So
24 you don't need to use some of your precious time to
25 read that to us as part of your opening remarks. And

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1 please focus your remarks on the topic of today's
2 briefing.

3 For my fellow Commissioners, I know they
4 are cognizant of the interest of each one of us to
5 ask questions. So please be brief in asking your
6 questions so we can move quickly and efficiently move
7 through today's schedule.

8 I will step in to move it along if
9 necessary. And, panelists, please note that I ensure
10 that we will have enough time. The 7 minute thing,
11 in addition to the clock, you'll see me waving and
12 trying to get your attention. That means you're
13 getting close to your time limit.

14 Now I'm going to call on two of our
15 Commissioners, Commissioner Kladney and Commissioner
16 Yaki. I promised them a whole two minutes each for
17 their opening statements. And I know they're going
18 to do their best if I can please call first on
19 Commissioner Kladney.

20 COMMISSIONER KLADNEY: Thank you very
21 much, Madam Chair. Good morning. Commissioner
22 Adegbile, a co-sponsor of this project, will be
23 unable to attend the briefing today because of an
24 unavoidable family issue.

25 As a co-sponsor of this project with

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1 Commissioner Yaki, Commissioner Adebile would like
2 to thank our fellow Commissioners, their special
3 assistants and legal interns for their work on this
4 project. A lot goes into these briefings.

5 Also, the newly appointed leader of our
6 Office of Civil Rights Evaluation, Marik Xavier-Brier
7 was a great help on this. And by the way,
8 congratulations, Marik, we look forward to your
9 leadership.

10 Commissioner Adebile also wishes to
11 thank Julie Grieco of OCRE for her hard work in
12 researching and preparing this issue for this
13 briefing.

14 Of course, he thanks his special
15 assistant Irena Vidulovic and legal intern, Alana
16 Thomas, and Communications Director Ang Rorison.

17 Finally, we would not be holding this
18 briefing if it wasn't for the great coordination and
19 logistics work of Ms. Pam Dunston and her staff. She
20 is there all the time when this Commission asks her
21 to make briefings happen in our office, in the field
22 or online.

23 Thank you, Ms. Dunston, and thank you the
24 entire staff of the Commission.

25 On a personal note, I would like to thank

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1 my very special assistant, Amy Royce, who is always
2 prepared for this briefing in excellent fashion and
3 our new legal intern, Clara Malkin, who is following
4 in Amy's footsteps. Great job.

5 These hurricanes dealt a serious blow to
6 millions of Americans, which many are still suffering
7 the consequences today. The questions need to be
8 asked if the government response was sufficient
9 enough for the United States to be proud of its civil
10 rights record or if there were civil rights failures
11 that resulted in more harm than what the hurricanes
12 levied on our citizens.

13 Commissioner Adebile thanks the
14 witnesses and participants for attending and
15 participating in today's briefing. Thank you, Madam
16 Chair.

17 COMMISSIONER YAKI: Are you waiting for
18 -- may I go? I'm Commissioner Michael Yaki. And in
19 2017, as I was watching the response for Hurricane
20 Harvey, I couldn't help but be reminded of the
21 response to Hurricane Katrina over 10 years before
22 and the images that we saw of the people who were
23 stranded, of the Ninth Ward being devastated.

24 And on a personal note, I am someone who,
25 like many millions of Americans, survived a natural

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1 disaster.

2 I rode through the Loma Prieta earthquake
3 in 1989 in the San Francisco Bay area. And I was
4 fortunate in many ways. I was fortunate because my
5 home was not damaged. I was also fortunate because
6 I had a couple advantages other people did not.

7 I had a law degree. I had a copy of the
8 Stafford Act, and I worked for a member of Congress.
9 And in that role, we worked to help the thousands
10 upon thousands of people who were needing assistance
11 after the quake.

12 And it gave me a newfound appreciation
13 and understanding and quite frankly a very skeptical
14 eye of our nation's federal response efforts in the
15 wake of a disaster.

16 And to that end, I began advising other
17 offices throughout the time I worked in Congress on
18 how to respond to disasters and how to work with FEMA.
19 And it's, quite frankly, a little shocking to see
20 that many years later not too many things have
21 changed.

22 And, in fact, in our mission as members
23 of the Commission on Civil Rights to note that there
24 may be a disproportionate impact of the federal
25 response with regard to its treatment of people of

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1 color to the disabled is something that I find
2 shocking today.

3 And I hope that the panelists today will
4 focus on that. I don't need to see, you know, five
5 paragraphs of statistics about how we're
6 investigating fraud and abuse. I want to know what
7 the Southeast Texas Regional Planning Commission was
8 doing with CDBG-DR funds with regard to how it was
9 being allocated or if it was being allocated in a way
10 that favored one population over another on the basis
11 of color.

12 I want to know why the amount of aid that
13 gets distributed disproportionately favors one group
14 over another. I would just note that for the record
15 that on the information that we were provided
16 already, it appears that people in Hurricane Harvey
17 received \$1,600 more per person than anyone in
18 Hurricane Maria in Puerto Rico.

19 These are the hard questions we need to
20 ask and we need answers. And I'm thankful for
21 everyone who has helped put this together. I look
22 forward to your testimony and let's proceed.

23 II. PANEL 1 - INTRODUCTION OF PANELISTS

24 CHAIR CANTU: Thank you, Commissioner
25 Yaki. Let me now introduce the seven people on the

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1 first panel.

2 Our first speaker this morning is David
3 Bibo, Acting Associate Administrator, Response and
4 Recovery, FEMA.

5 Our second speaker is Tony Robinson,
6 Region 6 Administrator, FEMA.

7 Our third speaker is Glenn Sklar,
8 Principal Deputy Inspector General, Department of
9 Homeland Security, Office of the Inspector General.

10 Our fourth speaker is Stephen Begg,
11 Deputy Inspector General, Housing and Urban
12 Development, Office of the Inspector General.

13 Our fifth speaker is Chris Currie,
14 Director, Homeland Security and Justice, U.S.
15 Government Accountability Office.

16 Our sixth speaker is Tevi Troy, author,
17 BPC senior fellow and former Health and Human
18 Services Deputy Secretary.

19 Our seventh and final speaker on Panel 1
20 is Jo Linda Johnson, Director, Office of Equal
21 Rights, FEMA.

22 And please note the countdown clock at
23 the top. And you may begin, Mr. Bibo. Please
24 proceed.

25

DAVID BIBO

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1 MR. BIBO: Madam Chair, thank you for the
2 opportunity to join the U.S. Commission on Civil
3 Rights proceedings today. I very much appreciate the
4 chance to talk about our work with Hurricane Harvey
5 and Maria as well as our work going forward.

6 I first joined FEMA in 2009 and have
7 served as a member of the Senior Executive Service
8 here at FEMA since 2012.

9 During the 2017 hurricane season, I was
10 the acting head of policy for FEMA. In that position,
11 I helped lead the Agency through a number of policy
12 challenges related to the response and recovery
13 efforts in the delivery of federal disaster
14 assistance following the devastations that Hurricane
15 Harvey and Hurricane Maria brought to Texas and
16 Puerto Rico, respectively.

17 At the time, I was also involved in
18 FEMA's efforts to enhance disaster assistance for
19 Puerto Rico and the U.S. Virgin Islands, including
20 language that was included in the 2018 Bipartisan
21 Budget Act.

22 This language that Congress passed and
23 the President signed has and continues to give us
24 greater flexibility in providing funding toward
25 restoring Puerto Rico's infrastructure and with that

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1 of the U.S. Virgin Islands.

2 Specifically, it allows us to restore
3 certain disaster damaged facilities and
4 infrastructure without regard to the pre-disaster
5 condition of that infrastructure, which is something
6 that we normally are not able to do under our
7 authorities in the Stafford Act.

8 Further, it also allows us to restore the
9 function of the facilities and infrastructure to
10 industry standards without regard to whether the
11 entire system of infrastructure was actually damaged
12 by the disaster, another important factor in helping
13 to enhance and bolster Puerto Rico and U.S. Virgin
14 Islands recovery from Hurricanes Irma and Maria.

15 Since January of 2020, I have served as
16 FEMA's Acting Associate Administrator for Response
17 and Recovery. In this role, I am responsible for
18 leading our response, recovery, logistics and field
19 operations functions nationwide in support of our 10
20 Regional Administrators who are distributed across
21 the country.

22 The historic 2017 hurricane season and
23 wildfire activity I'm sure you will recall certainly
24 demonstrated how vital the local, state, Tribal,
25 territorial and federal partnership is in delivering

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1 disaster assistance to the American people.

2 Harvey, Irma and Maria were three major
3 landfalling hurricanes that affected the continental
4 and outside of the continental United States in
5 relatively quick succession affecting 15 percent of
6 the United States' population or roughly 47 million
7 people. And, as we know, the effects of Hurricane
8 Maria on Puerto Rico's infrastructure were
9 significant, and we continue several years on to work
10 with the government of Puerto Rico as we do in Texas
11 and elsewhere to facilitate the recovery.

12 And I think it's important to recall that
13 following Maria in Puerto Rico, every airport and
14 port were closed. Only 5 percent of the population
15 had access to cell phone service and 3.7 million
16 residents were without electricity.

17 The challenges that a community faces in
18 advance of a disaster, before a disaster whether it's
19 poverty, housing constraints, fragility of
20 infrastructure are unfortunately all exacerbated by
21 disaster and that makes the response effort and
22 recovery effort all the more challenging.

23 FEMA along with our partners across the
24 Federal Government in support of the states and the
25 territories continue to provide historic levels of

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1 support to not only the government of Puerto Rico,
2 the U.S. Virgin Islands, for Maria and Irma but also
3 to Texas and Florida from Harvey and Irma.

4 In the Puerto Rico case, this includes
5 the award of the three largest recovery grants in
6 FEMA's history to rebuild large portions of Puerto
7 Rico's infrastructure, particularly the power grid,
8 the water system and school facilities.

9 Here on the mainland, as you all know,
10 Hurricane Harvey posed historic challenges for the
11 Houston area in the aftermath of the storm. More
12 than 42,000 people required sheltering assistance,
13 which was a substantial mission that I'm sure Tony
14 will talk more about.

15 We've come a long way in the recovery
16 operations from Harvey and Maria. The recovery has
17 continued to this day. We know that we have more to
18 do, and FEMA remains committed even as we prepare for
19 what may come next.

20 I think it's important to know that the
21 Biden administration priorities inform very much the
22 FEMA Administrator's priorities, particularly around
23 promoting equity and addressing the effects of
24 climate change.

25 Climate change is making disasters more

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1 frequent, more intense, and we're seeing greater
2 destruction. And we know we must all work together
3 to address these challenges head-on through risk
4 reduction projects to build more resilient
5 communities and that we must consider equity and
6 socially vulnerable populations in all that we do.

7 At FEMA we are continuously reviewing our
8 program delivery, our decision-making, and our
9 responses to improve our support that we provide to
10 disaster survivors.

11 We look forward to working and continuing
12 to work with our partners who are also represented
13 here on the panel today and look forward to the
14 feedback and the questions from the Commissioners to
15 help drive forward the FEMA Administrator and the
16 broader administration's commitment to promoting
17 equity in everything that we do.

18 I look forward to the questions from the
19 panel, Madam Chair. Thank you.

20 CHAIR CANTU: Thank you, Mr. Bibo. And
21 now we will hear from Mr. Robinson. Please proceed.

22 TONY ROBINSON

23 MR. ROBINSON: Good afternoon, Chair
24 Cantu and distinguished members of the Commission.
25 My name is Tony Robinson. I am the Regional

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1 Administrator of FEMA Federal Emergency Management
2 Region 6 office in Denton, Texas, which is
3 responsible for the states of Arkansas, Louisiana,
4 New Mexico, Oklahoma, Texas and the 68 Tribal Nations
5 that are within that geographic area.

6 I've been with FEMA since 1987 and served
7 as the Regional Administrator in Region 6 since 2013.
8 Our regional office is located in Denton, Texas, and
9 we have geographic based offices in Baton Rouge, New
10 Orleans, Austin and Houston with FEMA integration
11 team members co-located in state offices in Arkansas,
12 Oklahoma and New Mexico with the purpose to build
13 partnerships and capabilities with the emergency
14 management community.

15 We also have Tribal liaisons located in
16 New Mexico and Oklahoma where 61 of our Tribal
17 partners are located with the intent to closely
18 collaborate with our Tribal Nations and to place our
19 workforce closer to the communities that they serve.

20 I'm particularly proud of the regional
21 workforce and that includes people who have chosen to
22 work at FEMA after personally being impacted by
23 disasters themselves.

24 Region 6 has seen some of our nation's
25 largest disasters and our team has responded to many

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1 notable disasters, including a very busy 2020
2 hurricane season, which included five storms
3 impacting Louisiana, and Southwest Louisiana being
4 significantly impacted by Hurricanes Laura and Delta,
5 which made landfall within 12 miles of each other.

6 Our disaster work is in addition to our
7 constantly evolving steady state mission that
8 requires our team to tackle new challenges on a
9 regular basis, including most recently the extensive
10 COVID-19 work that was related to supply chain
11 issues, personnel support and vaccine distribution.

12 In 2020, the Region awarded \$18 billion
13 in grant funding to assist our partners in building
14 capabilities for disaster recovery.

15 That gives you some background on FEMA
16 Region 6. And now I will just give you some specifics
17 on Hurricane Harvey.

18 Hurricane Harvey made landfall near
19 Rockport, Texas, as a Category 4 storm with its peak
20 intensity on August 25, with the storm remaining
21 inland for several days, finally departing the state
22 on August 30.

23 In addition to wind and storm surge along
24 the Texas coast, heavy rainfall and widespread flash
25 flooding directly impacted 6.7 million people across

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1 an area approximately 41,500 square miles, including
2 our nation's fourth largest city, the City of
3 Houston, as well as many small and medium-sized
4 communities along the coast and deep into the
5 interior of Texas.

6 During the storm, the highest rainfall
7 total amount as reported was just a little over 62
8 inches in the rain gauge outside of Houston. In total
9 41 counties were designated for FEMA's Individual
10 Assistance program and 53 counties for the Public
11 Assistance program.

12 We also had 91,000 flood insurance claims
13 that were filed during this period with \$8.8 billion
14 being paid out for those claims.

15 A cornerstone of our response to
16 recovery approach is to place our staff and services
17 in the areas with the greatest need. For each of
18 these communities, we took the following actions.

19 We opened more than 100 disaster recovery
20 centers across the impacted area, using both fixed
21 and mobile sites. These DRCs saw more than 200,000
22 visitors.

23 We deployed dozens of disaster survivor
24 assistance teams who canvassed shelters, visited hard
25 hit neighborhoods, and contacted more than 500,000

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1 survivors.

2 Additionally, our staff participated in
3 more than 400 community events to assist and engage
4 survivors throughout the recovery.

5 We understand that communities cannot
6 fully recover from a disaster if the population does
7 not return. So we do our utmost to keep survivors as
8 close to home as possible while they recover. And
9 this was true in our immediate Harvey recovery as
10 well.

11 The volume of applications for this
12 disaster was one of the highest in FEMA's history.
13 In total, we provided more than \$1.6 million in grant
14 funding for more than 373,000 individuals and
15 households through the Individual and Household
16 Program.

17 Additionally, \$121 million in financial
18 assistance to applicants was provided for immediate
19 and critical needs because they were displaced with
20 no primary dwelling.

21 Housing assistance after disasters can be
22 extremely challenging. And for a disaster of the
23 magnitude of Hurricane Harvey, these challenges were
24 multiplied.

25 We work very closely with our states.

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1 And the lessons learned from the 2016 floods in
2 Louisiana, we partnered with the State of Texas to
3 deliver some new and innovative programs.

4 So in addition to some of our traditional
5 programs, like congregate and non-congregate
6 sheltering, traditional sheltering assistance, home
7 repairs, lodging and special repairs, there were two
8 innovative programs which were the shelter and
9 temporary emergency power programs, which Texas
10 called PREPS, Partial Repair and Essential Power for
11 Sheltering, and then permanent housing construction,
12 which was a new program that was direct housing
13 assistance limited to home repair.

14 In addition, we used a geographically
15 dispersed model for case management, assigning
16 specific impacted counties between the Texas Health
17 and Human Service Commission and the National
18 Volunteer Organizations active in disasters. And
19 this helped us better serve our disaster survivors.

20 The size and scope of Hurricane Harvey's
21 impact would have been challenging in a normal year.
22 But the subsequent disasters, as Mr. Bibb mentioned,
23 really placed considerable strain on our FEMA
24 resources.

25 I am extremely proud of the FEMA staff

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1 and our partners with the Texas Division of Emergency
2 Management along with our local, state, Tribal and
3 non-governmental organizations and our private sector
4 resources. Disasters are a whole of community
5 business and that certainly worked in the State of
6 Texas.

7 There are always lessons that we can
8 learn from disasters. From our previous work, we
9 implemented some of those things we learned in
10 Louisiana, and we are committed to improving in
11 meaningful ways every day.

12 Our work recovering from Hurricane Harvey
13 is not yet complete. But we've already begun to
14 establish a great deal in supporting our partners
15 along the long-term recovery efforts.

16 Today we've obligated over \$2.4 billion
17 for Public Assistance in more than 19,000
18 projects. There are only 509 projects that remain
19 open in Hurricane Harvey.

20 In total, the FEMA Stafford Act Program
21 provided over \$4 billion of assistance. And that's
22 from our Individual Assistance, Public Assistance and
23 Hazard Mitigation Program. And we temporarily housed
24 over 19,000 survivors in this disaster.

25 We remain committed to working with our

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1 federal, state and local partners to make our nation
2 more resilient and to learn from the challenges we
3 faced during Hurricanes Harvey and Maria and
4 subsequent disasters, including the COVID-19
5 pandemic, to ensure that all citizens have equal
6 access to our programs in compliance with our
7 nation's civil rights laws and policies.

8 Thank you for the opportunity to be part
9 of this public briefing. And I look forward to
10 answering your questions. Thank you.

11 CHAIR CANTU: Thank you, Mr. Robinson.
12 We'll now hear from Mr. Sklar.

13 GLENN SKLAR

14 MR. SKLAR: Good afternoon, Madam
15 Commissioner and Commissioners. I'm Glenn Sklar, the
16 Principal Deputy Inspector General at Homeland
17 Security.

18 Thank you for the opportunity to discuss
19 our oversight work today, specifically, our oversight
20 of FEMA's disaster response and recovery efforts in
21 Hurricanes Harvey and Maria.

22 Our office plays a unique and critical
23 role in the oversight of disaster management. We
24 ensure disaster programs are operating in an
25 effective and efficient manner and that public funds

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1 are spent in accordance with regulations.

2 We are well aware of the hardships of
3 multiple hurricanes stacked in a tight window in late
4 2017 placed on FEMA. We acknowledge the efforts of
5 dedicated FEMA employees and contractors who
6 persevered through these difficult circumstances,
7 work that was often accomplished far away from home.

8 With that said, we found many
9 opportunities for improved performance in the future.

10 Effective intervention from FEMA can mean
11 the difference between life and death for some
12 disaster survivors. With those stakes on the line,
13 we do not shy away from issuing top recommendations
14 for improvement.

15 Our oversight team was on the ground less
16 than two months after Hurricane Maria hit Puerto
17 Rico. Our teams spoke with multiple individuals who
18 noted serious problems with the distribution of meals
19 and water, such as containers arriving that were
20 supposed to be filled with food and water but were
21 either half empty from carrying unrelated goods.

22 FEMA lost visibility of about 38 percent
23 of its commodity shipments to Puerto Rico worth an
24 estimated \$257 million.

25 Overall, we conducted 10 audits related

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1 to our oversight obligations, and we published
2 corresponding reports between May 2019 and June 2021.

3 Audit topics included acquisition
4 contracting and controls, distribution of
5 commodities, oversight of grants, management of
6 disaster assistance funds and oversight of the IT
7 environment.

8 Specifically, we noted shortcomings in
9 FEMA's acquisition and contracting controls. For
10 example, FEMA inappropriately awarded two contracts
11 to supply roof tarps and plastic sheeting to disaster
12 survivors in Puerto Rico. Within a month, FEMA had
13 cancelled both contracts because the contractor did
14 not deliver those tarps and sheeting.

15 In addition, FEMA's Public Assistance
16 grants to the Puerto Rico Electric Power Authority,
17 PREPA, and PREPA's subsequent contracts with two
18 contractors to fix the electrical grid did not fully
19 comply with federal laws and regulations as well as
20 program assistance guidelines.

21 This led to potentially ineligible
22 contract costs and FEMA reimbursing PREPA more than
23 \$852 million for contract costs without confirming
24 PREPA provided proper oversight for the contract.

25 Another electrical grid contract that we

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1 reviewed was billing at a rate of \$616 per hour for
2 a senior accountant.

3 Additionally, deficiencies in FEMA's
4 management of commodity distribution in Puerto Rico
5 led to lost visibility of commodities and delayed
6 shipments.

7 For example, water deliveries had an
8 average shipping delay of 71 days. And food items,
9 average shipping delays of 59 days.

10 Of the approximately 97 million liters of
11 water FEMA shipped to Puerto Rico between September
12 2017 and April 2018, only 36 million liters reached
13 their final destination for distribution.

14 During the same period, only 24 million
15 of 53 million shipped meals reached their final
16 destination for distribution.

17 Further, FEMA's oversight of its IT
18 environment to support response in recovery efforts
19 was inadequate. FEMA's legacy IT systems were not
20 integrated and did not have the functionality needed
21 to keep pace with high volume processing.

22 Looking forward, DHS OIG has six ongoing
23 audits and reviews related to both disaster and
24 pandemic oversight to be initiated based on our
25 observations during visits to these disaster sites

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1 and our post-disaster analysis. We look forward to
2 publishing those reports.

3 Our criminal investigators also
4 investigated fraud and abuse related to these
5 disasters. Since April 2017, we have initiated 249
6 investigations related to Hurricanes Harvey and
7 Maria.

8 We have activated or leveraged resources
9 aimed at combating criminality and procurement, grand
10 fraud, disaster application benefit fraud, identity
11 theft, impersonation of FEMA or law enforcement
12 officials, and DHS employee misconduct.

13 For example, we investigated the \$1.8
14 billion electrical power contract in Puerto Rico, and
15 this resulted in the indictments of a former FEMA
16 senior executive, a second former FEMA employee and
17 the former president of an electrical company.

18 In conclusion, FEMA faced tremendous
19 challenges meeting mission requirements because of
20 the catastrophic nature of Hurricanes Maria and
21 Harvey in multiple concurrent nationwide disasters.

22 We hope that our testimony today has
23 provided the Commissioners with a holistic view of
24 our oversight work of FEMA's responses to these
25 disasters.

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1 I welcome any questions. Thank you.

2 CHAIR CANTU: Thank you, Mr. Sklar. Mr.
3 Begg, we will now hear from you.

4 STEPHEN BEGG

5 MR. BEGG: Thank you, Madam Commissioner,
6 distinguished Commissioners and Commission staff.
7 Thank you for the opportunity to participate in this
8 briefing.

9 As the Deputy Inspector General for the
10 U.S. Department of Housing and Urban Development, it
11 is my pleasure to discuss our office's work related
12 to HUD's disaster recovery programs and Hurricanes
13 Harvey and Maria.

14 HUD's disaster programs are designed to
15 assist individuals and communities in long-term
16 recovery from disasters and in mitigating the
17 potential effects of future disasters.

18 In recent years, disasters and federal
19 spending on them have increased exponentially, and we
20 expect them to continue increasing.

21 Since 1992, Congress has appropriated
22 over \$89 billion of grant funds through HUD's
23 disaster programs. A substantial portion of that
24 amount, approximately \$30 billion, has been
25 appropriated to assist Texas and Puerto Rico in the

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1 aftermath of Hurricanes Harvey, Irma and Maria.

2 The Office of Inspector General provides
3 independent comprehensive oversight of HUD's disaster
4 programs through audits, evaluations, reviews and
5 investigations.

6 For several years, we have identified the
7 administration of disaster recovery assistance as a
8 top management challenge for HUD. We focus a
9 significant portion of our oversight portfolio on
10 promoting effectiveness, the economy, and efficiency
11 in HUD's disaster programs as well as preventing
12 fraud, waste and abuse in them.

13 Our office appreciates this opportunity
14 to highlight several interrelated themes from our
15 work and to emphasize to the Commission our support
16 for codification of HUD's disaster programs.

17 We believe that creating permanent
18 program requirements through codification will help
19 disaster grant funds reach the individuals and
20 communities in need more quickly, and the
21 codification will generate more effective outcomes in
22 HUD's disaster programs.

23 Currently, HUD establishes its disaster
24 program requirements through notices in the Federal
25 Register rather than through its regulations. Each

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1 time Congress appropriates money for a disaster, HUD
2 generates a Federal Register notice specific to that
3 funding stream.

4 This process can quickly become
5 complicated for grantees as they may need to examine
6 multiple notices to understand the requirements
7 related to a disaster.

8 For example, in February 2017, Texas had
9 six open grants and was required to file 48 different
10 Federal Register notices to administer them.

11 We identified that many of the HUD
12 requirements in these notices are the same across
13 grants and disasters. In 2018, we recommended that
14 HUD codify these requirements in regulation to
15 provide consistency and clarity for grantees. Doing
16 so would reduce delays in grantee's planning efforts
17 and allow them to build programs that could be
18 executed efficiently in future disasters.

19 In April 2021, we again recommended that
20 HUD codify its disaster programs after we found that
21 HUD's extensive negotiations with the Office of
22 Management and Budget about new program requirements
23 significantly delayed the release of Federal Register
24 notices for Puerto Rico, Texas and other grantees
25 receiving disaster mitigation funding.

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1 Establishing a permanent set of
2 requirements would reduce uncertainty early in the
3 grant life cycle and help grantees build capacity to
4 administer grants more quickly.

5 We have consistently identified that
6 disaster grantee struggles with staffing, procurement
7 and implementing strong internal controls early in
8 the process.

9 We found these capacity issues existed
10 for HUD grantees in Texas and Puerto Rico and that
11 the unprecedented amount of grant funds they were
12 initially charged with administering was a
13 significant factor in their struggle to establish
14 capacity.

15 We have also found that lack of clarity
16 in program requirements generates delays and
17 ineffectiveness later in the grant life cycle.

18 In our 2020 report on HUD's top
19 management challenges, we highlighted our concern
20 with a significant number of disaster recovery
21 grantees that HUD has designated as slow spenders.

22 We are currently conducting work to
23 examine how HUD monitors these grantees and assists
24 them in improving the timings of their activities.

25 Our other recent reviews have highlighted

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1 that standard requirements would help grantees better
2 deliver core recovery functions like rebuilding and
3 rehabilitating homes.

4 In addition to the longstanding
5 challenges in these programs, we recently surveyed
6 HUD disaster grantees and found that the COVID-19
7 pandemic caused many aspects of their recovery
8 activities and operations to slow down or stop
9 entirely.

10 Grantees struggled during the pandemic to
11 communicate with their partners and advanced
12 construction projects due to health and safety
13 restrictions in many jurisdictions.

14 As grantees continue grappling with these
15 challenges and our communities face increased threats
16 from disasters, our office will continue using our
17 oversight toolkit to help HUD achieve its strategic
18 objective to support effectiveness and accountability
19 in long-term disaster recovery.

20 We believe that codification of HUD
21 programs is an important first step in fulfilling
22 that objective.

23 Thank you for the opportunity to discuss
24 our work with you today. I look forward to your
25 questions and to continue providing information to

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1 the Commission that may further your important work.

2 CHAIR CANTU: Thank you. We will next
3 hear from Chris Currie. Please proceed.

4 CHRIS CURRIE

5 MR. CURRIE: Okay. Thank you very much.
6 I appreciate the opportunity to be here today.

7 I'd like to start by discussing just
8 federal disaster assistance in the U.S. and what the
9 future is going to look like first.

10 There are at least 29 federal agencies,
11 including FEMA, that provide disaster aid to
12 individual citizens and also to states, territories,
13 Indian Tribes and other local governments.

14 Just to give you a sense of the scale,
15 since 2005, the federal government spent over \$500
16 billion, that's over half a trillion dollars on
17 disaster assistance and aid.

18 And while Harvey and Maria are certainly
19 huge catastrophic events, they get a lot of
20 attention, the U.S. is experiencing more and more
21 severe weather every day due to climate change.
22 Thunderstorms are causing massive flooding in places
23 that don't typically see this, places like West
24 Virginia, Tennessee, Nebraska.

25 Wildfires are changing from localized

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1 rural events in the past to state, region-wide
2 events, and sometimes now urban catastrophes.

3 From 2016 to 2018 alone, 5.6 million
4 people applied to FEMA for assistance and that
5 doesn't even include other federal agencies. That's
6 just FEMA. It's important to understand these
7 statistics because the federal government is bearing
8 more and more of the burden for these increasing
9 disasters and costs.

10 We found that most states, territories,
11 localities and Tribes, they don't have a rainy day
12 fund to pay for disasters. They rely on the federal
13 government. And the picture is worse for our
14 citizens.

15 Many have no emergency funds to pay
16 unexpected bills let alone to prepare for disasters.
17 Many are also very underinsured. This means that
18 more and more people will rely on federal help after
19 disasters.

20 And before I talk about some of our
21 findings, I do want to say that we get to observe the
22 dedicated staff from FEMA and other agencies every
23 day in our work. They work long and hard hours to
24 serve our citizens and communities.

25 They're also committed to improvement

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1 when we identify challenges and weaknesses as well.
2 And on that note, our work has identified a number of
3 challenges across federal disaster programs, all of
4 which were used during Hurricane Harvey and Maria and
5 every other major disaster.

6 A key theme that has emerged is that
7 individual citizens or states, localities or
8 territorial or Tribal governments with fewer
9 resources, capacity and experience, not surprisingly
10 face greater challenges navigating federal programs
11 and assistance.

12 Our work has also shown areas where
13 changes could help vulnerable populations. For
14 example, after the 2017 disasters, we found that
15 elderly survivors and the disabled face challenges in
16 registering for and obtaining assistance.

17 For example, at the time there was no way
18 for survivors to indicate a disability need when they
19 registered with FEMA. We have recommended they do
20 that. FEMA has since taken action to address that.

21 The groups also face challenges obtaining
22 supplies because they couldn't reach centralized
23 distribution centers. That was also a problem.

24 We also found that some components of
25 FEMA's Individual Assistance enrollment process may

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1 unintentionally make it difficult for vulnerable
2 populations to obtain assistance.

3 Multiple steps in this process can be
4 confusing, can be highly technical, can be time
5 consuming to navigate, requiring the survivor to
6 follow-up with incomplete information. This lands
7 harder on those with less education and jobs where
8 they can't sit at a computer all day or be on the
9 phone going back and forth with the federal
10 government.

11 We have recommended that FEMA look at
12 these components in their process for opportunities
13 to streamline it where possible and that could
14 encourage further participation and better outcomes
15 for vulnerable populations.

16 Another major theme is that state and
17 local resources are a huge factor in the
18 effectiveness of preparedness response and recovery
19 efforts. And they also dictate the amount of federal
20 help that's going to be needed along the way.

21 For example, in Puerto Rico, the Virgin
22 Islands and we can't forget the Pacific Territories
23 that were hit really hard in 2018, serious fiscal
24 constraints, years of depleted tax bases and large
25 populations and poverty led to lack of planning and

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1 preparedness for major disasters over the years.

2 The result was that FEMA and other
3 agencies had to step in to more directly help not
4 surprisingly.

5 This also severely affects the long-term
6 recovery and the long-term outcome, which is
7 extremely important for understanding how communities
8 and people get back on their feet in the future.

9 We reported that Puerto Rico's fiscal
10 constraints have made it very difficult to fund and
11 start large infrastructure repairs after Maria, even
12 under, you know, when there's been a lot of federal
13 help.

14 This is in stark contrast to other states
15 like Texas, Florida, California, that can provide the
16 upfront funding to jumpstart recovery because they're
17 able to secure debt or, you know, move other funds in
18 their budgets to start paying for these projects
19 whereas Puerto Rico and others are solely reliant on
20 federal funds, which in some cases don't actually
21 come until years after the disaster.

22 For example, on January 21, Puerto Rico
23 had spent -- we just reported this -- they had spent
24 \$158 million to start, you know, long-term rebuilding
25 projects, like, schools, the power grid, the water

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1 systems. You know, this is out of \$23.8 billion at
2 that time that FEMA had obligated.

3 This just shows you that while the funds
4 were obligated, meaning they were ready to start, the
5 upfront funding is not there to start some of these
6 projects because they're reimbursed later.

7 Tribal governments face similar
8 challenges. When we surveyed Tribes, they struggled
9 to build and maintain emergency management resources.
10 This also makes it difficult for them to navigate
11 complicated disaster programs across numerous
12 agencies like FEMA, HUD, SBA and many others.

13 In closing really quick, the GAO has a
14 lot of work going on right now on how the federal
15 government, not just in the disaster area but across
16 the federal government, is assessing equity in their
17 programs and how they're implementing the President's
18 recent Executive Order on equity.

19 One thing that is emerging is that
20 collecting better data is really key to this process
21 so you can start assessing these programs.

22 This is a new lens that we're looking at
23 these programs through in many cases. And so it's
24 going to require a number of steps to get to the point
25 where we can make good conclusions about what reforms

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1 might be needed.

2 So thank you for the opportunity to be
3 here, and I look forward to the discussion.

4 CHAIR CANTU: Thank you, Mr. Currie. We
5 will now hear from Mr. Troy. Proceed.

6 TEVI TROY

7 DR. TROY: Thank you. Thank you for
8 inviting my testimony and thank you to Mr. Currie for
9 very interesting testimony. I learned a lot from
10 that, and I appreciate it.

11 I'm a former Deputy Secretary of Health
12 and Human Services and White House aide. While I was
13 in government, I was involved in the response to three
14 disasters, 9/11, Katrina and the 2008 economic
15 collapse. I also helped prepare for other pandemics.

16 My time in government, coupled with my
17 background as a presidential historian, led me to
18 write the book, Shall We Wake the President? Two
19 Centuries of Disaster Management From the Oval
20 Office, which is a look at presidential response to
21 disaster and an examination of how to better handle
22 it.

23 I learned in writing the book that over
24 the course of our history, the federal government has
25 become increasingly involved in dealing with

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1 disasters. As this involvement has increased, so has
2 the American people's expectations regarding federal
3 disaster response.

4 In addition, the scope of disasters
5 covered by the government keeps increasing and has
6 steadily done so over the last century. Whereas
7 weather disasters were once local problems, they are
8 now national issues. And the federal government is
9 increasingly expected to prevent them from happening,
10 rescue people while they are happening and make
11 people whole after they happen.

12 Along with this increased scope of
13 disasters covered is an increase in presidential
14 involvement, which is my area of expertise. We can
15 see this by looking at how Presidents have dealt with
16 five major weather-based disasters, 1889 Johnstown
17 floods, 1927 Mississippi floods, 1969's Hurricane
18 Camille, 1992's Hurricane Andrew and 2005's Hurricane
19 Katrina, all of which I elaborate on in my written
20 testimony. And these illustrate the growth of
21 federal involvement over our history.

22 This background is crucial in looking at
23 the federal response to 2017 Hurricanes Harvey and
24 Maria, the subject of today's hearing.

25 Let's look at Harvey first. Having lived

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1 through the government's ineffective response to
2 Katrina, I was encouraged by what the federal
3 government, and particularly FEMA, seemed to have
4 learned in the intervening period.

5 As a result of Harvey and in response to
6 Harvey, things seemed well coordinated. FEMA worked
7 well with state and local officials, pre-deployed key
8 resources and personnel in advance and adopted new
9 approaches.

10 To identify how to get resources and
11 rescuers where they need to go, FEMA now tracks
12 Facebook and Twitter to identify people and places in
13 need of assistance.

14 In addition, FEMA operation centers are
15 now high tech multi-screen environments giving
16 emergency managers far more real-time information
17 than we had in previous disasters.

18 Another improvement we saw during Harvey
19 was in the integration of volunteers. Government
20 does not have enough personnel to help everyone who
21 needs it. These limitations make outside assistance
22 invaluable. Volunteer assistance is not just about
23 the Red Cross anymore. FEMA's website lists about a
24 dozen professional volunteer organizations to
25 cooperate with during disasters.

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1 Given these improvements, the question
2 arises of why the Harvey response was a success while
3 the subsequent Maria response was seen as subpar.

4 One obvious reason is the challenge of
5 disaster response off the mainland. Getting
6 resources to an island is just much harder without
7 the interstate highway system. As a FEMA official
8 told me at the time, to say it's logistically
9 challenging is an understatement.

10 This challenge was compounded by the
11 devastation on the island. Maria's first responders
12 in Puerto Rico were also her victims and many were
13 unavailable to the response effort.

14 The result is that FEMA faced both its
15 normal job of transporting supplies but also the
16 typically local responsibility of distributing them
17 to the public.

18 In addition, it's harder for residents
19 themselves to evacuate when planes and boats are the
20 only avenues of escape. We often sees lines of cars
21 on Interstate 95 headed north from Florida before
22 hurricanes. Such an escape route was not available
23 to Puerto Ricans before Maria. This hurdle also made
24 it that much harder for Good Samaritans on the
25 mainland to come to their assistance, which they did

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1 in great numbers in Harvey.

2 A second difference for the difference in
3 response stemmed from the challenge of coping with
4 serial disasters, which is something that has been
5 mentioned earlier.

6 While post-Katrina reforms improved
7 FEMA's surge capacity, its ability to handle more
8 than one disaster at a time, FEMA, like any government
9 agency, has limited resources. Its appropriations
10 run out quickly requiring the less than nimble
11 Congress to provide disaster funding. And FEMA
12 personnel, who do heroic work, are only human and
13 subject to exhaustion when faced with constant
14 deployments and redeployments over a short period.

15 Third, Maria was so powerful that it
16 devastated the island's power and communications
17 infrastructure. This put FEMA at an immediate
18 disadvantage in its response efforts.

19 Finally, and this is outside the FEMA
20 purview, is the issue of presidential focus. The
21 White House seemed ready for Harvey but less ready
22 for a state of continuing hurricanes over an entire
23 month.

24 The lesson here is that presidential
25 leadership is about continued effort in the face of

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1 ongoing challenges.

2 I would now like to make some suggestions
3 for how to improve our hurricane response going
4 forward. As much as we laud our technological
5 progress, for good reason, the fact remains that
6 there is little that government officials can do in
7 the short-term and even the long-term to prevent or
8 minimize the physical impact of catastrophic weather
9 events.

10 As a result of the President and federal
11 government need to ensure they do not overpromise and
12 make sure that they meet the properly calibrated
13 promises that they do issue. Even this is not easy.

14 The federal government is a massive
15 bureaucracy with 2 million employees, a number
16 impossible to control. President Obama once
17 recounted a warning he had received from Defense
18 Secretary Robert Gates: "Somewhere, somehow,
19 somebody in the federal government is screwing up."

20 Nothing can ensure the absence of
21 mistakes, but smart leadership can better prepare
22 officials for crises. Presidents should make sure
23 that senior officials engage in preparation drills
24 early in their administration and continue to do
25 periodically throughout.

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1 The President also needs realistic budget
2 numbers. The government spends a staggering amount
3 of money on disasters, which is not budgeted properly
4 for that spending.

5 According to the Center for American
6 Progress' Daniel Weiss and Jackie Weidman, the U.S.
7 government spent \$136 billion on disaster relief
8 between 2011 and 2013, about \$400 per U.S. household.
9 This spending takes place among 29 departments. The
10 U.S. Department of Agriculture alone has 19 disaster
11 related programs.

12 Another problem is the degree to which
13 disaster funding is improvised. The federal
14 government does have an annual disaster contingency
15 fund for about \$29 billion. It actually spent \$136
16 billion, as I said, from 2011 to 2015.

17 This improvisational approach harms the
18 attempts at responsible budgeting but also harms the
19 affected communities imposing additional burdens on
20 communities in need. It is also inefficient.

21 Each bureaucracy for which disaster money
22 is directed spends money in the process of directing
23 said funds. At the end of the process, less money
24 ends up in the hands of the victims than taxpayers
25 directed on their behalf.

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1 These suggestions should in no way take
2 away from the tremendous job that our disaster
3 response officials do. The career officials in the
4 U.S. government who deal with disaster are dedicated
5 and skilled professionals. No one can prevent or
6 eliminate the consequence of disasters, but we should
7 appreciate the good work of these individuals and
8 strive for improvements that will make their jobs
9 easier going forward.

10 Thanks again for inviting me to testify.

11 CHAIR CANTU: Thank you, Dr. Troy. At
12 this point, we are now going to hear from Ms. Johnson.
13 Please proceed.

14 JO LINDA JOHNSON

15 MS. JOHNSON: Thank you so much and thank
16 you for having me and good afternoon, everyone, Chair
17 Cantu, Commissioners and Commission staff.

18 Thank you for your interest and the
19 important work of the Federal Emergency Management
20 Agency. It's my pleasure to join this briefing today
21 together with my colleagues to address the
22 Commission's questions.

23 Just a brief bit of background. I joined
24 in FEMA in July of 2018, well after the historic 2017
25 hurricane season. However, I joined FEMA in large

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1 part because of the 2017 hurricane season.

2 In the summer of 2017, I was with another
3 DHS component leading their civil rights function.
4 That season overwhelmed the country as noted by Mr.
5 Sklar. And when FEMA sought volunteers from its
6 sister agencies within DHS, I volunteered and was
7 deployed to assist on the ground.

8 I spent six weeks observing firsthand the
9 powerful help FEMA provides to people and to
10 communities. I also saw firsthand the limitations of
11 FEMA programs. I was compelled to join as a result
12 of this and join the effort to see how I might assist
13 the 20,000 plus dedicated professionals who are
14 working across FEMA.

15 Mr. Bibo and Mr. Robinson described the
16 scope and size of responding to disasters as well as
17 the significant efforts that were put in in the wake
18 of Harvey and Maria.

19 Mr. Currie described the scope and size
20 of responding to disasters generally. And I agree
21 with Mr. Troy. I learned a tremendous amount from
22 his opening statement.

23 He also described the significant
24 improvements that FEMA has made and continues to make
25 with every new lesson learned.

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1 In our statement, we have provided the
2 Commission detailed information on civil rights
3 concerns raised from Harvey and Maria as well as the
4 subsequent outcomes. I welcome questions related to
5 this information and appreciate the opportunity to
6 hear your concerns. And I look forward to the
7 discussion. Thank you.

8 CHAIR CANTU: Thank you and the gift of
9 time is greatly appreciated because I've got
10 Commissioners who really do have questions.

11 I'm going to ask Commissioners, would you
12 please just ask one or two of the panelists rather
13 than ask all seven to respond to your questions.

14 I'm going to allow Commissioner Yaki to
15 go first and stick to the two rule because I would
16 like to have possibly a second round.

17 COMMISSIONER YAKI: Thank you very much,
18 Madam Chair. Thank you very much, Madam Chair. This
19 is directed at Acting Associate Director Bibo or
20 possibly Ms. Johnson as well.

21 As a general observation, and I think I
22 foreshadowed this in my preparatory remarks, this is
23 not an oversight hearing about how FEMA responded to
24 Harvey and Maria. This is an oversight hearing about
25 the civil rights implications of what that response

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1 was.

2 And in at least two different studies of
3 the data from the actual response by FEMA to Harvey
4 and to Maria, one study said that if you were in a
5 neighborhood with higher proportion of Black
6 residents, the chances of you getting an inspection
7 was diminished and that when you finally did get an
8 inspection, there was an 11 percent denial without
9 explanation rate versus for white neighborhoods that
10 had a .4 percent. And in addition, there was also a
11 disparity in the amount of money awarded in the amount
12 of 5 to 10 percent difference.

13 Another study showed that blocks with
14 significant numbers of non-white residents who had
15 lower credit scores and lower income also had much
16 lower approval rates and, again, much lower amounts
17 of money given, which is kind of contrary exactly to
18 what it is we're trying to do.

19 I'd like to get your response to those
20 two studies and what you believe of the data and what
21 the agency has done as a result of this.

22 MR. BIBO: Commissioner, thank you for
23 the question and let me start by saying that for the
24 first time in my service at FEMA, we have an
25 administration and an administrator who has made

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1 promoting equitable delivery of disaster assistance
2 one of the Agency's top priorities, and I think it's
3 just important to note that at the outset.

4 So we are aware of a number of studies
5 that associate FEMA assistance with inequitable
6 outcomes for disaster survivors. The Commission, I'm
7 sure, is aware of recent reports in newspapers,
8 national level newspapers, that have shined a
9 spotlight on this and shined a spotlight again on
10 studies that would suggest that FEMA may provide less
11 assistance to survivors of different demographics.

12 We take these studies seriously. We take
13 seriously the findings, and we are digging into this.
14 As an Agency, we have made it a priority to do so.
15 We have launched an equity review of the Individual
16 Assistance Program, which is precisely the program,
17 Commissioner Yaki, that you're referring to in your
18 remarks from a moment ago.

19 And, as I say that, I think it's also
20 important to reaffirm that there are a number of
21 specific factors that figure into the delivery of
22 disaster assistance to individuals.

23 Every circumstance is different even
24 though there are commonalities among them. Until you
25 really dig in and look at a one-to-one comparison and

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1 understand the specifics, it is difficult to
2 generalize.

3 And one of the reasons it is difficult to
4 generalize is because up to this point, and we are
5 working very aggressively on this right now, we have
6 not gathered demographic data for our Individual
7 Assistance applicants.

8 And so we have an obstruction in that
9 regard because we need to have that data in order to
10 do analysis ourselves and to be able to track equity
11 and delivery of the assistance that we provide.

12 That is one of a number of initiatives
13 that we have underway to strengthen our ability to
14 evaluate and then act on the equitable delivery of
15 disaster assistance.

16 COMMISSIONER YAKI: Are you saying that
17 until now, despite Katrina, despite everything, there
18 has been no systemic effort to attempt to
19 disaggregate the data, even to a consumer survey, to
20 understand exactly why some people may or may not
21 have qualified and whether or not there were any
22 factors in that that would be, let's say, problematic
23 in terms of a federal civil rights perspective?

24 MR. BIBO: Well, we do extensive consumer
25 surveys of disaster survivors following disasters on

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1 a range of topics. But our gathering of demographic
2 data has not been part and parcel of the Individual
3 Assistance Program. We are taking steps now to make
4 that part of what we do as a matter of course.

5 COMMISSIONER YAKI: Okay. Thank you.
6 Madam Chair, one additional question under your two
7 question rule. For those three who are watching,
8 FEMA is more than just individual response. It's
9 also community response as well through something
10 called the Public Assistance program, something that
11 I am very familiar with when I was working on behalf
12 of the City and County of San Francisco when I was an
13 aid to a member of Congress.

14 The question I have is actually for, I
15 think, Mr. Robinson, who is the Regional
16 Administrator. And, Mr. Robinson, thank you for the
17 work that you do. I have worked very closely with
18 Region 9 administrator throughout that entire period
19 of time and found him to be a dedicated public servant
20 as you are and working under difficult conditions at
21 best.

22 One of the things I wanted to ask of you
23 as someone who is more on the ground as it were, is
24 to what extent are you allowed or are you permitted
25 or do you have authority to interact with local

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1 entities to whom you give grants whether it's the
2 CDBG-DR or what have you?

3 And I'm specifically thinking about the
4 articles that have come out about the initial plans
5 by the Government Land Office of Texas with regard to
6 the distribution of funds for home buybacks and
7 hazard mitigation where the amount of money, for
8 example, in Taylor's Landing worked out to something
9 -- a community, by the way, that has absolutely no to
10 very little Black residents -- worked out to around
11 \$69,000 per capita, per individual, and Port Arthur,
12 which is a very large Black population, that the
13 distribution of these Public Assistance funds worked
14 out to about \$84 per capita.

15 Have you heard about that and did you
16 have anything to do -- did you have any reaction to
17 that? And more importantly, does FEMA have any
18 jurisdiction with which to ask a question of a grantee
19 why are you doing it that way and what criteria are
20 you using and is it impermissible under federal civil
21 rights laws?

22 MR. ROBINSON: Commissioner, thanks for
23 the question. And so FEMA does not authority over
24 the CDBG-R program. That is a Housing and Urban
25 Development grant program that is administered by

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1 that agency.

2 We have a -- the Stafford Act has a
3 mitigation grant program. And we work very closely
4 with the state who is the grantee but also have
5 project managers who work with the local applicants
6 as they put together their application packages and
7 stuff.

8 The same thing under the FEMA Public
9 Assistance program. We have program delivery
10 managers who work very closely with our state
11 counterparts who work very closely with the local
12 governments as they look at rebuilding.

13 And so in Harvey what we looked at very
14 closely was what needed to be rebuilt and how we build
15 that more resilient, implementing current codes and
16 standards for current flood plain regulations but
17 working in the field with our program delivery
18 managers as well as our state counterparts to help
19 local governments recover.

20 CHAIR CANTUS: Thank you. Can I have Mr.
21 Kladney? Commissioner?

22 COMMISSIONER KLADNEY: Thank you, Madam
23 Chair. Ms. Johnson, I'm interested in FEMA and how
24 they treat disabled people. And so my question here
25 may sound complicated because I'm only allowed a

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1 couple.

2 But FEMA has failed to develop assistance
3 for disabled people that are power dependent, at
4 least before Maria and Harvey, people who needed
5 personal assistance, had service animals, bariatric
6 equipment -- excuse me, I also have a phone mess in
7 my room -- and more importantly people with mental
8 health conditions like autism and support for people
9 with cognitive and intellectual disabilities.

10 It is my understanding many of these
11 people were sent to long-term care facilities when in
12 fact they could have been in shelters with non-
13 disabled people.

14 And I understand you have a training
15 program called a Disability Integration Cadre. This
16 is on your website. It calls for integration
17 specialists and advisors who provide services at
18 evacuation centers.

19 One, I was wondering if you could provide
20 us with a copy of the training program for providing
21 these services that existed immediately prior to
22 Harvey and Maria and a copy that you currently have
23 after Harvey and Maria.

24 But I would also like to know what's been
25 done since these hurricanes to change this and comply

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1 more with Olmstead?

2 MS. JOHNSON: Thank you, Commissioner
3 Kladney, for your question. I appreciate that. It
4 would be my pleasure to tell you a little bit more
5 about FEMA's Office of Disability Integration and
6 Coordination. We refer to that as ODIC.

7 ODIC is an office whose primary mission
8 is to ensure that individuals with disabilities, and
9 the concerns and needs of individuals with
10 disabilities and communities, are integrated into a
11 response to a disaster.

12 And so the Office of Disability
13 Integration and Coordination work hand-in-hand with
14 our FEMA programs in response and in recovery to build
15 in the appropriate responses and the appropriate
16 considerations into those programs.

17 ODIC also works with -- in addition to
18 FEMA programs and FEMA personnel, they also work with
19 our SLTT recipients to ensure that they have
20 adequately considered the needs of individuals with
21 disabilities.

22 As you noted, there have been concerns
23 raised in several states about the sheltering of
24 individuals with disabilities in long-term care
25 facilities as opposed to in general population

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1 shelters with the rest of their community.

2 When those issues come up, we work
3 directly with those states, with those localities to
4 ensure that the communities of individuals with
5 disabilities are getting exactly what they need.

6 I'd be happy to take back your request
7 for the training materials. And we can certainly
8 provide that to the Commission after this meeting.

9 MEMBER KLADNEY: I think really what I'm
10 looking for is an answer as to what's been
11 specifically done since then to make sure that
12 disabled people are allowed to stay with their
13 communities. I never get those answers, and I was
14 wondering if you could provide that to me.

15 MS. JOHNSON: Yes, sir. And I certainly
16 want to provide you with a clear answer.
17 Unfortunately, the answer, like most things in
18 disaster response, is actually quite complicated.

19 FEMA is limited to working -- when a
20 disaster strikes, in a particular location. We are
21 limited in working with the states within their own
22 rules and their own regulations. And in different
23 states, there are different regulations for
24 sheltering, for example.

25 Where that legislation is problematic

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1 from a federal perspective, that is where my office,
2 the Office of Equal Rights, gets involved with the
3 state, with our partners in ORR to ensure that we're
4 doing right by those communities.

5 It varies from location to location
6 unfortunately. So it is not a simple answer.
7 However, I am happy to follow-up with you on the
8 particulars of our response in Harvey and Maria.

9 COMMISSIONER KLADNEY: Thank you. And I
10 have a question for Mr. Currie. Regarding the
11 insurance and funding, isn't it true that local
12 governments underinsure their facilities knowing that
13 the federal government will come in and pay in the
14 future? Shouldn't Congress require these local
15 governments to insure up to a fair market value?

16 MR. CURRIE: That's a great point. We've
17 never said in a study that that's definitively the
18 case. However, it's pretty hard to argue that it's
19 not - with the hundreds of billions of dollars
20 provided in Public Assistance funding, a lot of that
21 going to repair public buildings, city hall, you
22 know, recreation centers, things like that.

23 The question would be why would a state
24 or local government insure those facilities if they
25 knew the federal government was going to pay for it?

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1 So I think that's a very valid point.

2 In regard to Congress taking action on
3 that, you know, certainly I don't know that would be
4 in the federal purview because I don't know that they
5 could require states or localities.

6 I mean, they would look at the Stafford
7 Act and, you know, make amendments to what would or
8 would not be covered in terms of public facilities to
9 maybe try to encourage additional insurance.

10 But, you know, the other challenge in
11 this area has been the same has been true in flood
12 insurance is that a lot of insurance, you know, the
13 insurance markets won't support that because it's
14 just not just actuarially sound. The risk is too
15 high. So the federal government has to step in in
16 those cases and basically be the insurer.

17 COMMISSIONER KLADNEY: Thank you. Thank
18 you, Madam Chair.

19 CHAIR CANTU: Thank you. Commissioner
20 Gilchrist, you've got your hand up?

21 COMMISSIONER GILCHRIST: Yes. Thank you,
22 Madam Chair, and let me thank all of the panelists
23 for your testimony here today.

24 My question is directed to Mr. Currie.
25 Mr. Currie, in May of 2021, the President announced

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1 that FEMA would be receiving a billion dollars for
2 building what's classified as resilient communities
3 and a portion of that apparently is to be targeted to
4 disadvantaged communities. Is that right?

5 MR. CURRIE: That's my understanding.

6 COMMISSIONER GILCHRIST: And so I'm just
7 -- help me understand a little bit about what may be
8 some of those activities that could potentially be
9 targeted and more specifically your thoughts about
10 how that should be rolled out.

11 MR. CURRIE: Yes, sir. Great question.
12 Well, the building resilient infrastructure
13 communities of -- the BRIC program is a new grant
14 that is basically designed to be awarded
15 competitively across the country to help state and
16 local communities address those areas of highest
17 risk.

18 So the idea is you don't have to wait for
19 a disaster to happen to get federal funding to rebuild
20 in a more resilient way. We can be more proactive
21 and hopefully avoid a lot of the damage and disruption
22 in the community in the future.

23 I am aware of the announcement that a
24 portion of that funding will be directed, you know,
25 to vulnerable populations. I don't know that the

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1 specifics have been spelled out. Mr. Bibo may know
2 that more. But I will say this. That I think it's
3 going to be really interesting to see, you know, what
4 criteria are used to make those determinations.

5 I talked about this in my opening
6 statement. One of the challenges that communities
7 with fewer resources and more vulnerable populations,
8 less educated, more low income, you know, they don't
9 necessarily have the same capacity and resources, you
10 know, to bring in the help to manage some of these
11 programs.

12 So, you know, the question I would have
13 is, you know, how are these communities going to
14 develop their plans for these funds because they have
15 to justify how they're going to use this funding and
16 provide technical assessments and risk-based
17 decision-making and things like that.

18 So I think that's something that needs to
19 be addressed on the front end, you know, how do we
20 make sure that, you know, a lower income county or
21 community can compete with a highly resourced, you
22 know, county or community that has a tremendous
23 amount of experience with these types of programs?

24 COMMISSIONER GILCHRIST: I applaud you in
25 that regard. And certainly that would be coming out.

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1 Mr. Bibo, would you like to comment on that as well?

2 MR. BIBO: Commissioner, while the BRIC
3 program is not in my area of responsibility, I am
4 familiar with the fact that as part of the scoring
5 criteria for BRIC funding proposals, 15 percent of
6 the qualitative scoring criteria considers the extent
7 to which socially vulnerable populations were
8 included in consideration for the application. There
9 is also additional technical scoring criteria.

10 While I'm not certain how the mitigation
11 program intends to apply that, I can tell you that in
12 our recent efforts around vaccination efforts where
13 we placed federally run Community Vaccination Centers
14 in selected communities across the country, we used
15 the CDC Social Vulnerability Index to help guide us
16 with the placement of those vaccination centers so
17 that we could reach socially vulnerable populations
18 as readily and accessibly as possible. So I'm happy
19 to follow up with the program officials to get you
20 some additional information for the record.

21 COMMISSIONER GILCHRIST: Please, that
22 would be helpful. Thank you. Thank you, Madam Chair.

23 CHAIR CANTU: I'm going to call on
24 myself. My question has to do with farmers of color
25 and to let you that this is a family story. When my

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1 mother was four months old, she survived the
2 hurricane in South Texas.

3 Her mom and dad and her older sister
4 spent the night in a chicken coop. That was the
5 highest piece of property they had, the highest
6 structure that they could take shelter in.

7 So given that low income farmers of color
8 and people in rural areas, you know, have fewer
9 resources and challenges in terms of communication
10 accessibility, I'm going to ask Mr. Bibo what FEMA is
11 doing directed at the rural areas and programs or
12 data broken out by rurals.

13 MR. BIBO: Yes, Madam Chair. Thank you
14 for the question. And the answer is yes. In fact,
15 when we deploy to disasters, we will organize
16 ourselves in a way that gives FEMA field leaders
17 responsibility for a certain geographic area,
18 particularly in the significant incidents that we're
19 talking about today and others that you will have
20 heard of.

21 What this does is it puts a division
22 supervisor or branch director you may hear us refer
23 to them as in the position of understanding the
24 geographic area that they are serving and
25 understanding the population that they are serving

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1 and understanding how to reach the population that
2 they are serving.

3 This is something that we have gotten a
4 lot better on in recent years given the greater
5 ownership to our field leaders in how they reach
6 populations that they are responsible for, whether
7 it's different language approaches or if it's a
8 population that relies more on receiving information
9 via radio than television, if it's a population that
10 is more likely to come in person to apply for disaster
11 assistance rather than to pick up the phone or to go
12 on the Internet. It's really working hard to try and
13 meet people where they are.

14 I'll give you a recent example, in Lake
15 Charles, Louisiana, which is an area that has been
16 affected over the last year by multiple disasters,
17 including two tropical cyclones and a recent spate of
18 severe storms and happens to have a lower vaccination
19 rate than we are all striving for with respect to
20 COVID-19.

21 So in partnership with the State of
22 Louisiana, FEMA Region 6, Tony Robinson's team,
23 opened a recovery service center to provide
24 accessible information to disaster survivors cutting
25 across all of these disasters and provided the

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1 opportunity to be vaccinated at the same site. Not
2 a thing that people were coming to the site
3 specifically to do, but were taking an opportunity in
4 an under-vaccinated community to make it available.
5 And, you know, 14 percent of those who have shown up
6 at the site have availed themselves of a vaccine which
7 is, you know, a positive story.

8 But understanding the local community
9 we're serving, trying to meet them where they are in
10 how we communicate, what we communicate and the
11 services that we offer is something that we have
12 gotten a lot better in recent years.

13 CHAIR CANTU: Thank you. I mean, just an
14 anecdotally, we've lost a lot of nurses in areas that
15 are rural, and they moved into the urban center, what
16 is now a sizable population, for the rural is going
17 to be the margin of the future.

18 Commissioners? Okay. I'm going to --
19 someone --

20 COMMISSIONER YAKI: I saw Commissioner
21 Adams. And then I raised my hand but Commissioner
22 Adams --

23 CHAIR CANTU: Thank you. Thank you for
24 that. I'm glad you're helping with that.
25 Commissioner Adams and then I'll come back with

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1 Commissioner Yaki.

2 COMMISSIONER ADAMS: Madam Chair. Thank
3 you, Commissioner Yaki. My first question is for Mr.
4 Bibo. Since you've been at FEMA in 2009, have you
5 had the opportunity to hear or otherwise see
6 firsthand or have any interaction or awareness of any
7 racially discriminatory policies being discussed or
8 people even saying stupid things related to the
9 distribution of aid in your experience there?

10 MR. BIBO: No, Commissioner, I have not.

11 COMMISSIONER ADAMS: Okay. My next
12 question is for Mr. Sklar. Could you translate
13 something for me? You used a term I was unfamiliar
14 with, lost visibility of its commodity shipments.
15 What does that mean?

16 MR. SKLAR: So FEMA actually has some
17 really nice processes and procedures to track
18 commodities from point to point, for example, from
19 the continental United States to Puerto Rico. And
20 they have things like GPS transponders that you can
21 attach to a container.

22 And there are actually seals that they
23 placed on containers so that when it reaches the
24 destination, you can then download that information
25 and know exactly what's in that giant container and

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1 if it reached target.

2 But what we found in our review was that
3 not all transponders were functional and that in the
4 case of Hurricane Maria that the seals were broken
5 before the supplies even left the United States.

6 In other words, the contractor just
7 opened up the shipping packages and repacked
8 everything, broke the seal. And then once it got to
9 Puerto Rico, there was no visibility as to what items
10 had made it to target.

11 COMMISSIONER ADAMS: Do you eventually
12 turn it over to somebody in Puerto Rico?

13 MR. SKLAR: A lot of these shipments were
14 destined for municipalities in particular areas. So
15 a lot of things get pushed down to smaller and smaller
16 shipments. It was really important to know what
17 actually made it over in the first place.

18 COMMISSIONER ADAMS: Has your office ever
19 investigated or are aware of any deliberate
20 disparities, racial disparities in FEMA disaster aid
21 allocation?

22 MR. SKLAR: I'm not aware of any work in
23 that area. But we are certainly aware of the media
24 stories and really appreciated the discussion today.

25 One of the first things we would ask for

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1 likely if we were to do such a job or audit review
2 would be to ask for the data. So maybe it just shows
3 how critical it is to capture that data as we go
4 along.

5 One final point on data. We did do quite
6 a bit of work on looking at the IT systems that were
7 in place. And it is our sincere hope, and I think
8 FEMA is responding, that they do allocate more money
9 to automation and IT for data capture so when folks
10 do arrive onsite that they can share information
11 amongst themselves and with other individuals and
12 other law enforcement agencies. But the data is
13 absolutely imperative here.

14 COMMISSIONER ADAMS: Thank you. That's
15 all I have.

16 CHAIR CANTU: Commissioner Yaki?

17 COMMISSIONER YAKI: Thank you very much,
18 Madam Chair. So I want to talk about -- and I'm not
19 too sure if this should go to Mr. Currie or Mr. Sklar
20 or Mr. Bibo, but one of the issues that is important
21 toward being effective in both the response and the
22 recovery is the ability to reach affected
23 populations.

24 And I'd like to understand what FEMA's
25 policy is or has it had a policy with regard to the

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1 issue of language and cultural competency of its
2 responders, of its recovery to individuals or the
3 people who go knocking door to door verifying aid
4 requests, the whole chain of disaster response from
5 the federal government.

6 To what extent, for example, when you saw
7 these hurricanes headed toward landfall in Texas and
8 when you saw this going toward Puerto Rico, to what
9 extent, for example, did that mobilize or should it
10 mobilize much more in the way of Spanish speakers in
11 terms of understanding what cultural or other issues
12 may be involved in trying to reach these populations
13 in terms of making sure that they responded
14 correctly?

15 We all know that there are many
16 populations -- especially, like if you're a DREAMer,
17 for example, or if you're a parent of a DREAMer, you
18 might be not willing to sort of answer the door if
19 someone is knocking on it.

20 How does FEMA or how has FEMA or has FEMA
21 ever responded in that way or prepared in that way
22 with regard to -- for Latinx populations that are
23 going to be targeted by a natural disaster like a
24 hurricane?

25 MR. BIBO: Commissioner, I think it's

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1 appropriate for me to start with that question if I
2 can. I would first say that the quantity of personnel
3 that we had who were fluent in Spanish as we
4 approached a very significant incident, particularly
5 in Puerto Rico, was a limitation for us. We did not
6 have as many personnel that were fluent in Spanish as
7 would have been helpful in delivering the assistance
8 that we needed to deliver at speed.

9 And thankfully we're in a very different
10 position today. We have now still more than 700
11 people that are FEMA employees in Puerto Rico, most
12 of whom were hired locally in Puerto Rico after the
13 storm, which is something that we can do quite quickly
14 and do in many disasters that we face. And it helps
15 us not only with language competency locally but also
16 with local knowledge and, again, going back to the
17 point of meeting people where they are.

18 We now find ourselves in a position where
19 we have a solid core of Spanish speakers, which is,
20 I would say, the most frequent language that is of
21 greatest consequence in the disaster environment
22 facing, but it's not the only. And so we have to
23 rely on a range of other tools, contractors, for
24 instance, to resolve other shortfalls. But I'll say
25 --

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1 COMMISSIONER YAKI: Just a quick
2 question, just to interject very quickly. That's
3 great. How about the materials themselves, the
4 applications, the website, things like that? Is
5 there a language option in there as well?

6 MR. BIBO: Yes. And this is, again,
7 another place where we've come a long way. We have
8 paid close attention to the languages that are in
9 play in a particular area that we are working.

10 I will tell you for instance this
11 morning, right after the press release announcing the
12 President's declaration of an emergency for Florida
13 for the building collapse in Miami-Dade went out in
14 English. It went out in Spanish immediately
15 thereafter. That is common practice now.

16 The federally run Community Vaccination
17 Centers and those that we provided guidance to around
18 the country that we provided funding for, we also
19 provided guidance about language access and placing
20 signage in multiple languages as well as American
21 sign language interpretation service availability.

22 So we've really come a long way with
23 this. We take it very seriously.

24 COMMISSIONER YAKI: And at the disaster
25 assistance centers themselves, I know most of its

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1 done online now. I remember the analog era where
2 people got to stand in line and actually submit their
3 applications.

4 But to the extent that there are still
5 people on the ground, how about the contractors, for
6 example, the people who go and verify the claims for
7 individuals and housing programs? Is there a way to
8 assign and ensure that if the household is Spanish
9 speaking that they send a Spanish speaking contractor
10 to them as well?

11 MR. BIBO: Commissioner, if I could, I
12 would like to ask Ms. Johnson to say a word because
13 this is a part of what she has been leading as well
14 across the Agency, if that's appropriate.

15 MS. JOHNSON: Absolutely. Thank you,
16 sir. Commissioner, I would say two things in response
17 to that. If we have information ahead of time about
18 the household that we are encountering, whether it's
19 a language, a limited English proficient household,
20 whether it's an individual who, harkening it back to
21 Commissioner Kladney's question about individuals
22 with disabilities, if it's a household that has
23 someone who is deaf, then we'll need a sign language
24 interpreter. Whatever the actual language needs, the
25 communication needs are, if we have that information

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1 ahead of time, the answer to your question is yes.
2 We can provide the assistance that is needed the first
3 time they encounter FEMA personnel.

4 In reality, however, we often do not have
5 that information ahead of time. And that's where we
6 can use technology to assist our contractors in the
7 field.

8 So we have at FEMA a robust language
9 access plan that is on our website. Mr. Bibo
10 mentioned our successes in the Community Vaccination
11 Centers and the language access that was provided in
12 those Community Vaccination Centers.

13 One of the ways we did that is with a
14 language line, where we provided information in over
15 180 languages based on an individual who walks in the
16 door, we can get someone on the phone in their
17 language very quickly.

18 We can also do that, use technology to
19 provide sign language interpreters on the ground
20 immediately in front of an individual. So hopefully,
21 that addresses your question.

22 MR. BIBO: Commissioner, if I may just
23 add one additional item that I think will be --

24 COMMISSIONER YAKI: Sure.

25 MR. BIBO: -- of interest to the

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1 Commission. For the first time in FEMA's history,
2 with the vaccination mission that the President
3 launched on January 20, we convened in FEMA's
4 National Response Coordination Center a Civil Rights
5 Advisory Group that was led by Ms. Johnson and helped
6 promote and drive several of the initiatives that
7 you've heard referenced here today with respect to
8 promoting equity and access for socially vulnerable
9 populations in that vaccination mission, including
10 deploying Civil Rights Advisors to FEMA's 10 regional
11 administrators who are operationalizing a number of
12 those programs.

13 And so Ms. Johnson led that civil rights
14 advisory group. And I just wanted to note that for
15 the Commission's benefit.

16 COMMISSIONER YAKI: Thank you, Mr. Bibo.

17 MR. ROBINSON: Hey, Dave, if I can add,
18 this is part of the region's pre-planning for known
19 threats and hazards and part of our damage assessment
20 process. We collect that data as well so that as we
21 build our teams to send to the field, we take that
22 into consideration as well.

23 CHAIR CANTU: I'm going to turn to David,
24 but it is not a new problem that people need services
25 and language accessibility in order to receive those

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1 services. A friend of mind filed a lawsuit on behalf
2 of Spanish speaking farmers in Texas and the defense
3 was -- they were being foreclosed upon and all of the
4 notices were in English.

5 And their defense was, well, we didn't
6 know where to find notices that had already been
7 translated. And it turned out in discovery that the
8 notices had been translated in Puerto Rico and just
9 the agencies that were foreclosing didn't know that.

10 And so this was a problem more than 10
11 years ago. And that you're working on it now is
12 wonderful, and I really thank you, Ms. Johnson, for
13 saying that and for doing what you're doing. But
14 it's an older problem, and it has roots in decision-
15 making that impacted very heavily on people who are
16 a minority.

17 So I'm going to call on David, on
18 Commissioner Kladney. I'm going to give the last
19 word to Commissioner Gilchrist and then we're going
20 to take a 10 minute break. So please be brief with
21 us, okay?

22 And the contractors are counting on me to
23 be able to put this in a format that the public can
24 view it. Commissioner Kladney?

25 COMMISSIONER KLADNEY: Ms. Johnson, I've

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1 thought about the answer to one of my questions, and
2 you said that the local government seemed to have
3 different laws that seemed to block you from
4 providing disabled people the ability to be in the
5 regular shelter with non-disabled people.

6 Was that your answer? Did I understand
7 that right?

8 MS. JOHNSON: To clarify, Commissioner
9 Kladney, it's not that they block FEMA. It's that
10 they can make it more of a challenge in that we have
11 to intervene.

12 I'm going to get this phrase wrong, and
13 I want to give my colleagues a chance to correct me.
14 But emergency management with FEMA is locally
15 executed.

16 And it's important to remember that at
17 all times. FEMA is not necessarily on the ground
18 with states, localities, Tribes and territories
19 making decisions in the first moments that decisions
20 are made.

21 And when decisions are made that are
22 counter to civil rights requirements, and I know all
23 of you know this as civil rights practitioners,
24 decisions get made and we, as civil rights attorneys,
25 have to come back and undo those at times.

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1 So there may be decisions that are made
2 by states that are contrary to federal law. When
3 federal funds are in place, we need to bring them
4 into compliance and that sometimes takes time. It
5 doesn't always happen in the initial moment.

6 And just, again, Commissioner Kladney, to
7 clarify, the trigger is when federal funds come into
8 play. A state is free to respond to a disaster as it
9 sees fit if it does not invite the Federal Government
10 in. So it's a different question.

11 COMMISSIONER KLADNEY: So do you -- well,
12 when you train the local emergency management people,
13 don't you train them on Olmstead? Don't you tell
14 them it's a requirement? Don't you tell them how
15 they're supposed to react?

16 MS. JOHNSON: Absolutely.

17 COMMISSIONER KLADNEY: So they still
18 violate it, and you still fund?

19 MS. JOHNSON: So what we fund and how we
20 respond varies from disaster to disaster and how a
21 state, a locality, a Tribe or a territory responds
22 without federal funds versus when there is a
23 presidentially declared disaster and FEMA is
24 involved. Those are not always the same.

25 COMMISSIONER KLADNEY: And I have

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1 questions for Mr. Sklar and Mr. Begg. I was
2 wondering, Mr. Sklar, you said you were going to
3 publish some post-audits that you've done regarding
4 Maria and Harvey. Is that correct, for a report?

5 MR. SKLAR: So just to clarify, so we did
6 complete 10 audits, and those are all posted on our
7 website. But I can certainly make them available,
8 point the Commission to all of those.

9 There are six additional products in
10 process and some begin to cross over into COVID as
11 well as we begin to look at the COVID response and
12 FEMA's work on that.

13 COMMISSIONER KLADNEY: Thank you. And
14 for both of you, I was wondering if you were satisfied
15 with the actions taken from FEMA and the responses to
16 your reports and recommendations that were made as a
17 result of the hurricanes and also their civil rights
18 compliance?

19 MR. SKLAR: I can try to answer first. I
20 would say generally FEMA has been cooperative and
21 certainly trying to meet the spirit of the
22 recommendations that we have laid out.

23 But I can't report that all of the
24 recommendations have been implemented yet and some
25 are still under discussion. But for the most part,

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1 FEMA has expressed interest in cooperating and making
2 necessary changes, and we really appreciate that.

3 COMMISSIONER KLADNEY: Which ones do you
4 think are the most important ones that are
5 outstanding?

6 MR. SKLAR: One of the biggest problems
7 we saw was the lack of advanced contracts in place.
8 I think that could have prevented a lot of problems
9 in some of these hurricane situations. In other
10 words, you actually do contracts beforehand and you
11 may never use them but they're there and ready to go.

12 But when you don't have those, you're in
13 a situation where you're just scrambling and that was
14 pretty apparent. So I think that's pretty important.

15 And we also think it's really important
16 to have much better tracking of all items from point
17 to point. And there are a lot of issues that go with
18 that tracking that can make things better.

19 And finally, again, the IT suggestions
20 are real. Just imagine hundreds of people pouring
21 into a disaster response site and not having laptops,
22 not having access to a network, and coming back and
23 going out to a neighborhood and not being able to
24 input what neighborhood they were just at because
25 they can't get on the system. And that would go to

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1 your racial disparities.

2 And you need that data. So we really
3 need a good IT backbone at FEMA. It helps everybody.

4 COMMISSIONER KLADNEY: Thank you. Mr.
5 Begg --

6 CHAIR CANTU: Commissioners, we're going
7 to start the next panel in five minutes. So I'm
8 sorry, Commissioner Kirsanow, I'm sorry, Commissioner
9 Kladney.

10 We need to stay on schedule. We were
11 queued up to start. We're going to take a five minute
12 break. And then please come back in five minutes
13 because the next panel is ready to go.

14 And so I thank everyone who has spoken.
15 And I really appreciate the specific questions that
16 the Commissioners posed.

17 You are free to supplement the record
18 later. We will keep the record open for 30 days. So
19 if you've got more information, panelists, we look
20 forward to hearing from you.

21 See you all in five minutes.

22 (Whereupon, the above-entitled matter
23 went off the record at 1:38 p.m. and resumed at 1:44
24 p.m.)

25 CHAIR CANTU: Welcome back to the US

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1 Commission on Civil Rights. We have our second panel
2 on the issues of federal responses to Hurricanes
3 Maria and Harvey. So we'll -- and protections
4 following a natural disaster.

5 Let me briefly introduce the panelists in
6 the order in which they will speak. Our first
7 panelist is Kira Romero-Craft, Director of the
8 Southeast Region for LatinoJustice, PRLDEF,
9 LatinoJustice.

10 Our second panelist is Andres Gallegos,
11 Chairman, National Council on Disability. Our third
12 panelist is Nicole Roy, Project -- Project
13 Coordinator, Salvation Army. Our fourth panelist is
14 Charley Willison, Postdoctoral Fellow. Dr. Willison
15 is at the Harvard Medical School.

16 So Ms. Romero, Craft, please proceed.
17 We've got a timer -- no? Not set up in the corner.
18 I will time you for seven minutes, and on that
19 countdown, you'll see me waving hands when you're
20 close to the end. So Ms. Romero-Craft, you're the
21 first one. Please proceed.

22 KIRA ROMERO-CRAFT, DIRECTOR, SOUTHEAST REGION

23 LATINO JUSTICE, PRLDEF

24 MS. ROMERO-CRAFT: Thank you very much.

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1 Thank you all, Chair Cantu and members of the US
2 Commission on Civil Rights. My name is Kira Romero-
3 Craft, and I serve as the Director of the Southeast
4 Region for LatinoJustice PRLDEF, the Puerto Rican
5 Legal Defense and Education Fund.

6 LatinoJustice is a human and civil rights
7 organization dedicated to defending the rights of all
8 Latinos, including Puerto Ricans, and is anchored in
9 the experience of the Puerto Rico diaspora since our
10 inception. Today we continue to address the civil
11 and constitutional rights of Puerto Rican and Latino
12 communities.

13 Thank you for the opportunity to testify
14 before you in the place of Juan Cartagena about the
15 ongoing issues related to Hurricane Maria, including
16 the effect on migration and the difficulties evacuees
17 face, the disparities and inequalities associated
18 with relief, and the continuing rebuilding efforts in
19 the struggles that persist still today, almost four
20 years later.

21 I have been working with impacted Puerto
22 Rican evacuees since 2017 and have experienced
23 firsthand the complaints of discrimination suffered
24 by Puerto Ricans fleeing disaster. But also have

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1 witnessed the lasting trauma associated with such a
2 disaster.

3 Over 175,000 people fled Puerto Rico
4 within one year of Hurricane Maria, and instead of
5 being welcomed with sympathy and safety, they were
6 met with additional hardships, lack of stability, and
7 abject disregard for the long-term rebuilding efforts
8 required to provide equity to Puerto Ricans living on
9 the island.

10 Under the Stafford Act, Puerto Rico and
11 the US Virgin Islands are covered with the same
12 protections and forces applicable to the States, as
13 the Act prohibits discrimination in the provision of
14 disaster assistance to jurisdictions like the colony
15 of Puerto Rico. And yet, it is clear from multiple
16 government reports, news articles, and studies
17 conducted that Puerto Rico received disparate
18 treatment, and to their detriment.

19 The Government Accountability Office has
20 found that FEMA's response to Hurricane Maria in
21 Puerto Rico alone represents the largest and longest
22 single response in the Agency's history. FEMA itself
23 reported in its after-action report of 2018 that the
24 pre-hurricane planning assumptions were severely

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1 underestimated, when looking at actual damage, and
2 required significantly more assistance than expected.

3 Not only did FEMA not adequately predict
4 or prepare for a storm such as one like Hurricane
5 Maria in response, FEMA lacked the necessary
6 personnel needed to handle the storms. And even when
7 FEMA sent staff, not as many staff deployed at one
8 time, and the staff (audio interference) disparate
9 treatment with lack of funding.

10 While states affected by Hurricanes
11 Harvey and Irma awarded nearly one billion in aid to
12 survivors within two months post-landfall, survivors
13 of Hurricane Maria on the island did not get awarded
14 the same amount of funding until nearly four months
15 after landfall.

16 Despite the blatant failures by FEMA, it
17 must be understood that Puerto Rico's financial
18 crisis created a different and more complex situation
19 that FEMA was prepared for. The response to Maria
20 required a reimbursement program, with local agencies
21 providing the initial funding for the work and
22 seeking reimbursements afterwards.

23 Yet these municipalities and the island
24 overall is crippled by debt that restricted this

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1 program, which made the program ineffective in the
2 face of the scale of devastation caused by the
3 hurricane to the island's infrastructure.

4 As such, of the 23.8 billion allocated,
5 Puerto Rico has only spent 158 million for long-term
6 rebuilding projects. While our written testimony did
7 not include assertions of discrimination claims made
8 outside of our lawsuit, *Ascencio v. FEMA*, the case
9 that we filed, we'd like to amend the statement and
10 assert that housing discrimination and wrongful
11 ejection did occur.

12 On February 2019, news reports noted that
13 of the 1.1 million claims made by Puerto Ricans living
14 on the island for assistance for FEMA, less than half
15 were approved because FEMA either denied requests for
16 repair outright, or demanded onerous and expensive
17 alternative documentation.

18 And in Florida, we dealt with survivors
19 who were wrongfully ejected from hotels receiving TSA
20 funding, as well as those seeking lease or rental
21 opportunities being charged application fees for
22 units that were non-existent. For individuals
23 fleeing disaster without resources, the impact of
24 lack of affordable housing and housing instability

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1 cannot be understated.

2 In closing, we emphasize that the
3 aftermath and the response to two different disasters
4 in two different jurisdictions varied immensely.
5 However, the Stafford Act along with its non-
6 discrimination mandates does not make such a
7 distinction. We submit that the White House made
8 those distinctions repeatedly.

9 It is impossible to ignore that there's
10 still work to be done in Puerto Rico. By plane you
11 can see blue tarps that serve as roofs for those
12 individuals who have yet to recover. These blue tarps
13 also serve as stark reminders of the work that needs
14 to be done. Darkness covered the entire island when
15 Hurricanes Irma and Maria hit in September 2017, with
16 only the stars to light the night.

17 Citizens awaited for answers about when
18 power would return. Some of our fellow citizens
19 waited in the dark for an entire year in the longest
20 blackout in American history. And almost four years
21 later, they still remain in the dark, metaphorically
22 and also literally, with the crippled infrastructure
23 and the fear of an impending storm with stronger force
24 looming in the distance.

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1 We must bring Puerto Rico out of the
2 years of darkness and provide the support that is due
3 to Puerto Ricans. Thank you very much for your time
4 and attention and the opportunity to speak on behalf
5 of impacted Puerto Rican evacuees and the fight for
6 equality today.

7 CHAIR CANTU: Thank you, Ms. Romero-
8 Craft. Mr. Gallegos, we'll hear from you now. Please
9 proceed.

10 ANDRES GALLEGOS, CHAIRMAN,
11 NATIONAL COUNCIL ON DISABILITIES

12 MR. GALLEGOS: Chair Cantu,
13 Commissioners, ladies and gentlemen, good afternoon.
14 Thank you for the invitation to participate in this
15 briefing. I refer you to my written testimony, which
16 provides background to the issues that I will
17 highlight here.

18 The federal local response, both in
19 Puerto Rico and Houston, failed people with
20 disabilities, with deadly consequences. People with
21 disabilities were not included in emergency planning
22 and were excluded from accessing much of the disaster
23 relief provided in their aftermath.

24 In addition, there was a notable

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1 disparate federal response to Hurricane Maria as
2 compared to the federal response to Hurricane Harvey.

3 Since the post-Katrina Emergency
4 Management Reform Act of 2006 required the National
5 Council on Disability and FEMA to work close with
6 each other to improve the outcomes of persons with
7 disabilities before, during, and after major
8 disasters. NCD has served as a liaison with the
9 disability community and FEMA.

10 My comments here are informed by meetings
11 and discussions with the disabilities community. In
12 fact, in May 2018 the National Council on Disability
13 went to Houston to hear firsthand from the disability
14 community. And we went to Puerto Rico in May 2019 to
15 do the same.

16 While today's briefing focuses on
17 discrete aspects of FEMA's response to these natural
18 disasters, as it pertains to Puerto Rico, I think
19 it's important that we understand the plight of
20 people with disabilities residing on the Island
21 before September 2017.

22 Now, that's important to better
23 understand why they were so vulnerable to the effects
24 of the hurricane and why greater efforts to address

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1 their needs and recovery was required. Look, we're
2 talking about the needs of approximately 687,000
3 people representing 21.7% of the island's population.

4 People with disabilities were vulnerable
5 to the effects of the hurricane, which was very
6 predictable, given the shaky infrastructure
7 supporting their needs prior to the hurricane.
8 Please note that their vulnerability was not
9 predictable because of the existence of the
10 disabilities. Rather, because of the environmental,
11 societal, and political infrastructure on the island.

12 There was significant economic
13 vulnerability, given the island's economic condition
14 and its disparate treatment in federal benefit
15 programs. The island's economic posture was bleak.
16 It filed for the equivalent of federal bankruptcy
17 protection in May 2017. More than 45% of the island's
18 population lived below the federal poverty level.
19 That's more than three times the US national poverty
20 rate.

21 In 2017, the poverty rate was 48% among
22 working-age people with disabilities. Residents of
23 Puerto Rico are ineligible for the Supplemental
24 Security Income SSI program, arguably the single most

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1 important safety net program for people with
2 disabilities in the United States.

3 Instead, they received benefits under its
4 predecessor program, the Aid to Aged, Blind and
5 Disabled Program, AABD. AABD, however, is not a
6 substitute for SSI. It provides significantly lower
7 benefits. The rate of maximum monthly SSI benefit is
8 \$741, compared to \$75 under AABD.

9 Moreover, there was significant food
10 insecurity. The Supplemental Nutrition Assistance
11 Program, SNAP, is available in all 50 states, DC,
12 Guam, and the Virgin Islands, but not in Puerto Rico.
13 Instead, Puerto Rico receives a block grant to fund
14 its own nutritional assistance program, NAP. SNAP
15 benefits are larger than NAP benefits. The criteria
16 to qualify for SNAP are lower than that of NAP.

17 The healthcare system also faced
18 challenges, mainly because it was underfunded.
19 Unlike the 50 states and DC, Medicaid spending in
20 Puerto Rico had been subject to the statutory annual
21 cap. The scope of the island's Medicaid program
22 itself was severely limited. It does not cover home
23 health services, hospice services, medical equipment,
24 and supplies, or nursing facility services.

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1 All of the foregoing contributed to a low
2 degree of resiliency in the ability of Puerto Rican
3 residents to, with this relief, to respond to the
4 effects of the hurricane. Thus, when Puerto Rico was
5 hit by Hurricane Maria, the effects were magnified
6 for its residents with disabilities.

7 As reported by the Puerto Rico Disability
8 Community Relief Network, there was only one fully
9 accessible centralized shelter for people with
10 disabilities.

11 Schools used for shelters in the 78
12 municipalities were physically accessible, they had
13 a ramp for wheelchair access, but did not have
14 accessible sleeping areas, accessible showers,
15 medical assistance, medical supplies, alternate
16 power, or sign language interpreters. None were
17 equipped to address the needs of persons with
18 intellectual or developmental disabilities.

19 As reported by the Partnership for
20 Inclusive Disaster Strategies in its May 2018 after-
21 action report, people with disabilities were turned
22 away from both general and special needs shelters.
23 Among the reasons included power dependence, the need
24 for personal assistance services, service animals,

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1 mental health conditions, and the need for support
2 due to cognitive or intellectual disabilities. And
3 disaster survivors with disabilities also did not
4 have equal access to the FEMA application process.

5 In closing, by failing to ensure access
6 to disaster relief services, FEMA violated the rights
7 guaranteed to individuals with disabilities under the
8 federal non-discrimination laws.

9 That was clearly noted on October 25,
10 2017, when the US House of Representatives Committee
11 on Homeland Security wrote to the Homeland Security'
12 Acting Secretary and FEMA's Acting Administrator,
13 requesting answers as to why the civil rights of
14 people with disabilities were not protected during
15 the response to Hurricane Maria.

16 The letter accused both of playing hot
17 potato with their responsibilities to protect the
18 civil rights of disaster survivors, pointing out that
19 people with disabilities were paying the price. The
20 exact price is unknown.

21 According to the 2018 George Washington
22 University Study, Hurricane Maria resulted in the
23 death of 2,975 people. How many were people with
24 disabilities is not exactly known. Disability is not

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1 a mortality data point captured in the United States
2 or in Puerto Rico.

3 Thank you again for the opportunity to
4 brief the Commission.

5 CHAIR CANTU: Thank you, Mr. Gallegos.
6 Our third panelist, Nicole Roy, would you -- would
7 you please proceed.

8 NICOLE ROY, PROJECT COORDINATOR

9 SALVATION ARMY

10 MS. ROY: Good afternoon today to
11 everybody, and thank you for the honor of being
12 invited to this panel. I have the great honor of
13 serving as the Project Coordinator for the Salvation
14 Army long-term recovery here in Puerto Rico. I came
15 as a volunteer and was supposed to stay two weeks,
16 and I never left.

17 The injustice that I saw here and also
18 the need was profound. I had volunteered in many
19 other disasters across primarily the US and had seen
20 a much more interactive role, a much more cohesive
21 role with municipalities and across the local
22 entities. Some of that was missing. Logistically
23 things were delayed here as well.

24 When we first started to become an

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1 organization that was looking at doing a long-term
2 recovery effort here in Puerto Rico, we had set
3 boundaries and had already had a set denomination of
4 funds. We had to escalate that seeing the need and
5 trying to reach the need.

6 We have now at this point done direct
7 services of over 30 million. That isn't product,
8 that is direct service to a person that is tangible.
9 We have had over 31,400 clients. Those are not
10 individuals, that's a family entity.

11 So the need was profound. The gap areas
12 that we were seeing on the boots, feet on the boots
13 on the ground here were a concern for us. We saw
14 many people denied for generators that had medical
15 needs, disabilities that needed extenuating
16 assistance or in-person visits. They could not reach
17 the DRCs at the time. Eventually turned into CRCs.

18 They could not access anything online,
19 and that was a large-scale confusion here on the
20 island. You had people that were not able to read or
21 write, so some of the process was difficult for them.
22 We had to walk them through things and do even re-
23 applications after they were denied.

24 But the cultural insensitivity here also

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1 was prevalent in the fact that when homes were being
2 assessed, unfortunately they were being understood as
3 this a family home, an entity that has been passed
4 down. There was a lot of cultural confusion with how
5 to proceed as this is not the United States, this is
6 Puerto Rico.

7 And unfortunately many people got left
8 behind in that and we had to really help. We were
9 lucky for free legal assistance that partnered with
10 us. We were lucky for those that were willing to
11 come out and do assessments. And again, this was
12 something that there was a disconnect with an outside
13 force and with FEMA, with a actual survivor.

14 I want to talk about what actually
15 happened with the one true survivor that needed the
16 help then and there. The blackout was something that
17 needed to be addressed as far as those with
18 disabilities and severe needs. The mental health, we
19 had the highest amount of suicide ideation in this
20 timeframe. Things that were not being addressed.

21 All DRCs and CRCs were in downtown areas
22 of the 78 municipalities, and unfortunately that was
23 not something that was accessible to most people.
24 That was a large logistical concern. The two smaller

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1 islands off of Puerto Rico, Culebra and Vieques, were
2 delayed significantly in services and were not able
3 to be treated on equal services as the main island of
4 Puerto Rico.

5 Vieques still is very much behind in what
6 they are able to provide their people in forms of
7 recovery methods. Where mainland Puerto Rico
8 recovered significantly faster, you have rural areas,
9 specifically pocketed rural areas that were more than
10 a year delayed, as well as Vieques, which is a
11 population of almost ten thousand people that are
12 survivors as well.

13 I talk about the human nature of the
14 delays and the logistical issues that I see and the
15 lack of cohesion with the local entities of the 78
16 municipalities and the local NGOs. I feel like this
17 has improved in some capacity. I can talk because I
18 live here on island and lived through the
19 earthquakes.

20 There was improvement, there was measures
21 trying to be met with full logistics, legal,
22 language, cultural modifications. And that was
23 something that aided in the efforts being faster. I
24 still am very grateful that you are all looking into

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1 this now and that you are willing to hear what
2 everybody has to say. This is how we learn and
3 improve. And I'm very thankful and honored to be
4 asked to be on this.

5 And I also indicate everything on the
6 written statement as well. Thank you.

7 CHAIR CANTU: Thank you, thank you. We
8 would like to hear from you now, please proceed.

9 CHARLEY WILLISON,
10 POSTDOCTORAL FELLOW, HARVARD UNIVERSITY

11 DR.. WILLISON: Thank you, Commissioners,
12 for inviting me to participate.

13 CHAIR CANTU: Dr. Willison.

14 DR. WILLISON: No problem, thank you so
15 much. Thank you, Commissioners, for inviting me to
16 participate in today's discussion. My focus is on
17 the federal responses to Hurricanes Maria and Harvey
18 and considerations for improving equity in future
19 federal disaster responses. I will also include
20 Hurricane Irma in Florida in my comments as a relevant
21 comparison point.

22 The outcomes and choices governments make
23 in disaster responses are increasingly important as
24 we face the ongoing COVID-19 pandemic and

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1 anthropogenic climate change that increases the
2 likelihood of public health disasters. Racial or
3 ethnic minority group members and low income
4 individuals are the most at-risk of adverse health
5 and economic consequences during disasters.

6 Recognizing these risks and addressing
7 accessibility barriers during federal aid
8 deliberations will help the federal government
9 prepare for future disasters and reduce the risk of
10 exacerbating inequities in future disaster responses.

11 In 2017, the federal government responded
12 on a larger scale and much more quickly across
13 measures of federal money and staffing to Hurricanes
14 Harvey and Irma in Texas and Florida, compared with
15 Hurricane Maria in Puerto Rico. The Trump
16 Administration often argued that the delay of money
17 and goods to Puerto Rico was based on geographic
18 limitations.

19 Yet disaster appropriation funding to
20 Puerto Rico took over four months after landfall to
21 reach a comparable amount of money received by
22 Florida and Texas in half the amount of time. The
23 additional two months to distribute critical aid is
24 likely not explained by geography but likely a

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1 product of congressional negotiations seeking to
2 demonstrate that Puerto Rico had no sufficient assets
3 to deploy and required financial assistance.

4 Similarly, federal staffing rates in
5 Puerto Rico reached comparable levels in three times
6 the amount of time as Texas, and thirty times the
7 amount of time as Irma in Florida. The magnitude of
8 this variation seems difficult to explain by
9 geography.

10 The variation in the responses was not
11 commensurate with storm severity and need after
12 landfall in the case of Puerto Rico compared with
13 Texas and Florida. Hurricanes Harvey and Irma made
14 landfall as category 4 hurricanes, and Maria hit
15 Puerto Rico as a high-end category 4. Maria caused
16 more damage in Puerto Rico than Irma in Florida or
17 Harvey in Texas.

18 When considering the mortality rates as
19 a measure of need or severity from the disasters, the
20 mortality rates resulting from Hurricane Maria were
21 more than 30 times greater than that of Harvey or
22 Irma. If disaster responses vary in their
23 effectiveness across communities, health equity is
24 affected.

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1 Representation in debates over disaster
2 aid influence accessibility of requests for aid.
3 Research conducted by my colleagues and I in 2021
4 analyzes federal congressional aid deliberations as
5 measured in congressional floor debates over funding
6 and disaster aid relief for the 2017 hurricanes for
7 six months after landfall.

8 We find bipartisan participation in floor
9 debates over aid to both Texas and Florida. However,
10 mostly Democrat participation for Puerto Rico.
11 Overall, deliberation and participation in debate was
12 strongly related to whether or not a state or a
13 district was at risk of natural disasters itself.

14 Nearly 30% of all states in the United
15 States did not participate in any aid debate
16 regarding supplemental appropriations for the 2017
17 hurricanes during the time period. Our results
18 suggest that the deaths of thousands of Americans may
19 not be enough to mobilize congressional participation
20 in disaster aid deliberations. And that legislators
21 may be more incentivized to participate in debates if
22 they perceive disaster risks to their districts.

23 This may exacerbate disparities where
24 some states have more advocacy for disaster aid in

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1 considering the disaster relief fund and supplemental
2 appropriations compared to other states. These
3 disparities are exacerbated by existing political
4 structures. Puerto Ricans are American citizens, but
5 Puerto Rico lacks congressional representation.

6 Puerto Rico is one of five US
7 territories. The territories are granted
8 congressional delegates, one for each territory, and
9 only in the House, with no voting power on the floor
10 of Congress. Previous scholarship demonstrates that
11 the delegate presence on the floor as opposed to
12 voting membership obscures territorial interests in
13 broader congressional deliberations.

14 Puerto Rico has been a US colony without
15 independent political status or integrated
16 representation and political power in the United
17 States since 1898. As a result of these institutional
18 constraints and colonial status, Puerto Rico faces
19 accessibility barriers to federal aid debates.

20 According to Puerto Rico, greater voting
21 power would likely reduce future barriers of requests
22 for disaster aid. Thank you for your time.

23 CHAIR CANTU: Thank you, Dr. Willison.

24 At this point we'll accept questions from the

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1 Commissioners. If I can offer an apology that I cut
2 off the -- two of the Commissioners in the first --
3 offer to them an opportunity to be first in this
4 panel.

5 Dr. Gilchrist.

6 COMMISSIONER GILCHRIST: Thank you, Madam
7 Chair. Just a brief question to Dr. Willison. So
8 thank you all for your testimony.

9 Are you familiar with the Oversight and
10 Management Board of Puerto Rico?

11 DR. WILLISON: I am, though this is not
12 my area of expertise, so I may defer to some other
13 panelists on this.

14 COMMISSIONER GILCHRIST: Okay, well, I'll
15 certainly yield to the other panelists as well. I
16 was just curious to know if any of panelists felt
17 like this particular board had any involvement as it
18 relates to the assistance that was necessary to get
19 to the residents of Puerto Rico, if in fact this board
20 had any impact on that, positively or negatively.

21 DR.. WILLISON: I can say, based on some
22 of my previous research, that the Board and the
23 constraints placed on Puerto Rico in terms of the aid
24 that it was able to receive based on the rules of the

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1 Board did affect aid considerations.

2 For example, and again, I'm sure that
3 other panelists can speak to this as well, there were
4 three supplemental appropriations in Congress in the
5 first six months after landfall of the hurricanes.
6 And while Harvey and Irma received supplemental
7 appropriations without conditions, Puerto Rico did
8 receive far more conditions. For example, in the
9 form of loans as opposed to relief, as a result of
10 these constraints through PROMESA and its territorial
11 status.

12 Something else to consider is that the
13 island had, prior to the hurricane, over \$70 billion
14 in debt, but does not receive the same bankruptcy
15 protections as states. And so this was something
16 else where Puerto Rico, which surprisingly enough had
17 to demonstrate need for aid, even though it already
18 faced a much more compromised infrastructure and
19 economic standing prior to the hurricanes, compared
20 to US states.

21 COMMISSIONER GILCHRIST: Thank you very
22 much for your comments. Any other panelists weigh in
23 on that? Thank you, Madam Chair.

24 CHAIR CANTU: Thank you. Commissioner

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1 Kirsanow.

2 COMMISSIONER KIRSANOW: Thank you, Madam
3 Chair, no questions.

4 CHAIR CANTU: Thank you, sir, appreciate
5 you. Would anyone else? I see Commissioner Adams.

6 COMMISSIONER ADAMS: Thank you, Madam
7 Chair. My question is for Dr. Willison. Are you
8 aware of the number in your study that was allocated
9 to Puerto Rico after Hurricane Maria, the amount of
10 money, federal money?

11 DR. WILLISON: Yes, I do have those
12 numbers, and this is also in my written testimony as
13 well. And I can pull up specific numbers if you're
14 --

15 COMMISSIONER ADAMS: Does the number 27
16 billion sound about right?

17 DR. WILLISON: I don't have that in front
18 of me. Could you give me more specifics about --

19 COMMISSIONER ADAMS: Well, I'll represent
20 my understanding is that it's \$27 billion. Do you
21 think that amount was inadequate?

22 DR. WILLISON: So this is something that
23 I can't speak to myself in terms of the amount. But
24 what I can address is the disparities in the amount

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1 of aid that was received between different
2 jurisdictions and at different time points.

3 COMMISSIONER ADAMS: Well, if you're
4 commenting on disparities, I'm curious as to what
5 would have been the better amount.

6 DR. WILLISON: So I -- while I can't --
7 I'm not a risk assessor, but what I can say, and my
8 written testimony demonstrates this, when we're
9 talking about disparities, we would assume that since
10 Puerto Rico had the same -- faced the same amount of
11 storm damage as Harvey and Irma and faced
12 incomparable mortality rates, that Puerto Rico would
13 have, during the timeframe, received similar amounts
14 of federal spending. And it did not.

15 During -- while it has received more aid
16 over the years, if we look at the initial six months
17 after landfall, congressional aid was delayed. And
18 I can pull up these time points if you'd like. And
19 it also did not receive as much aid as quickly.

20 COMMISSIONER ADAMS: Right, but you don't
21 have an answer as to what would have been adequate.

22 DR. WILLISON: I -- what would have been
23 adequate would be to have Puerto Rico receive the
24 same amount of federal aid as Harvey and Irma at the

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1 same time point.

2 COMMISSIONER ADAMS: Okay.

3 DR. WILLISON: And possibly more, again,
4 because of the limited infrastructure in Puerto Rico
5 and the severe mortality that we know came out of the
6 hurricane.

7 COMMISSIONER ADAMS: Okay, I'm confused
8 because Harvey, they received \$2 billion versus 27.
9 Are you basing your assessment that they didn't
10 receive enough on per capita reasons?

11 DR. WILLISON: So again, I apologize, I
12 don't have these numbers directly in front of me.
13 But from my study and in my written testimony, when
14 we were looking at the initial congressional
15 allocation, so this is in 2017, and when we're looking
16 at the FEMA aid that was distributed to families and
17 individuals, Puerto Rico did not receive as much as
18 Harvey and Irma at the same time points. And it was
19 delayed by periods of months.

20 COMMISSIONER ADAMS: Last question for
21 you. You talked about status as a territory. Under
22 the constitution of course territories are not
23 states. And there have been a number of status
24 plebiscites in Puerto Rico over the years.

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1 Do you think the amount of aid that would
2 have come to -- after Harvey, that Puerto Rico would
3 have been better off under independence, or under
4 something like free association, or under the status
5 quo?

6 DR. WILLISON: That is a very good
7 question. What I can speak to is concerns with
8 statehood and how this works in Congress. So we know
9 that Congress plays a really big role in regards to
10 disaster aid because of the disaster relief fund.
11 Congress assesses annual appropriations to the
12 disaster relief fund, as well makes quick
13 supplemental appropriations when it's needed during
14 major disaster events.

15 And this is where representation really
16 comes into play, right. And this can be both as an
17 accountability mechanism if disaster aid is not
18 allocated as quickly as needed. Or it can also just
19 be an initial request.

20 And so when we're looking at who -- at
21 congressional members and when they spoke on behalf
22 of need to different communities, Maria, discussions
23 of aid to Maria and advocacy for aid for Maria was
24 substantially lower than congressional advocating for

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1 aid to Harvey and Irma in Florida.

2 And so granting representation and
3 specifically voting status to Puerto Rico would like
4 make a big difference in these debate considerations.

5 COMMISSIONER ADAMS: And I'm sorry, I'm
6 not sure you understood my question, and that may be
7 my fault. Had Puerto Rico chosen independence
8 decades ago, would they have been better off or worse
9 or the same after Harvey?

10 DR. WILLISON: That is a great question,
11 and I don't think I can speak to that. I think that
12 would be a tough assessment to make. But it's
13 definitely a very important consideration, and an
14 ongoing debate in Puerto Rico. And there are camps
15 in both sides about whether independence or statehood
16 is important for the island. And that is something
17 I can't comment on, but perhaps some of the other
18 panelists can.

19 CHAIR CANTU: Commissioner, you're asking
20 a legal question of a medical doctor, so if you would
21 rephrase it to where her expertise would be of use to
22 you, I'd suggest that.

23 DR. WILLISON: And to clarify --

24 COMMISSIONER ADAMS: I don't have

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1 anything else, thanks a lot.

2 DR. WILLISON: I'm not a medical doctor,
3 I'm a social scientist. But yes, I do not have
4 expertise in this area specifically, and I don't want
5 to speak out of my area of expertise. So thank you
6 so much.

7 CHAIR CANTU: I apologize. I promoted
8 you. Commissioner Kladney has his hand up. And let
9 me ask Commissioner Kirsanow, questions?

10 COMMISSIONER KIRSANOW: No, thank you.

11 CHAIR CANTU: Thank you. Appreciate you
12 very much, again. Commissioner Kladney, I know
13 you've got questions.

14 COMMISSIONER KLADNEY: I've always got
15 questions, everybody gets tired of me asking
16 questions. Chairman Gallegos, are you familiar with
17 1812(f) waivers?

18 MR. GALLEGOS: I am not.

19 COMMISSIONER KLADNEY: Okay. Is there a
20 tracking system for individuals who are separated
21 from their friends and family, disabled people are
22 sent to places like hospitals? We talked about that
23 on the earlier panel. Is there a tracking system
24 that FEMA uses or local communities use?

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1 MR. GALLEGOS: You're saying in Puerto
2 Rico, or in general?

3 COMMISSIONER KLADNEY: Well, either in
4 Puerto Rico or in Houston during the --

5 MR. GALLEGOS: Well, in Puerto Rico it's
6 my understanding there is no tracking system. And
7 that was part of the problem, because the island's
8 government didn't even know where people with
9 disabilities resided. There wasn't a single source
10 of data where they could go to identify where these
11 people were, where they were concentrated, or how to
12 get them to a single, centralized, accessible
13 shelter.

14 So the absence of accounting for people
15 just on the island like attributed greatly to the
16 disparities that they faced during the hurricane.

17 COMMISSIONER KLADNEY: And I was
18 wondering if you could comment on Ms. Johnson's
19 response to my question regarding Olmstead and its
20 relationship and application to local entities in
21 disaster relief.

22 MR. GALLEGOS: So I apologize, I didn't
23 hear her response if that was in a prior session.

24 COMMISSIONER KLADNEY: Ms. Roy, could you

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1 describe the issues surrounding access for disabled
2 folks in Puerto Rico? I understand they only had one
3 facility that was able to take disabled people. And
4 then there were many more that had to be flown
5 stateside for care because of inability to provide
6 all sorts of different access and applications and
7 services in Puerto Rico. Could you expand on that?

8 MS. ROY: Yes, hi, good afternoon. Many
9 of the hospitals were incapacitated, so they could
10 not even perform regular duties during this time. If
11 they were not able to come to the metropolitan area,
12 which logistically was very difficult, some areas
13 like in Mirovis and Orocovis in the centralized area
14 of Puerto Rico were blocked off by mudslides,
15 rockslide formations, and the rivers over-flooding.
16 And the same with Utuado.

17 So many people couldn't be reached. They
18 couldn't even be identified by GPS coordinates, it
19 was very difficult. They had points coming in by
20 helicopter. When it was able to be an extraction,
21 they were brought, again, like I said either to the
22 metropolitan area or to Florida. The difficulties
23 and the delays in that process were difficult.

24 And if I can speak to what the previous

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1 chairman had said, the municipalities had not
2 previously identified those that would be in need in
3 a time of a disaster, and that caused many delays,
4 additional ramifications of death and additional
5 illnesses.

6 But also the scrambling of NGOs here on
7 the ground to try to coordinate with local first
8 responders to try to get to those people without
9 having logistical coordinations. So the delayed
10 timing was difficult and yes, they did send them out
11 of the Puerto Rico area.

12 COMMISSIONER KLADNEY: At the time the
13 hurricane made landfall, had FEMA or anyone else,
14 local entities or anything like that, pre-set
15 supplies in anticipation of a disaster?

16 MS. ROY: There was some, and it was
17 mostly concentrated in the metropolitan area. But
18 there were some sent to be prepared. Unfortunately,
19 those items were not sent to the smaller islands off
20 of Puerto Rico and to rural areas that then were
21 isolated.

22 COMMISSIONER KLADNEY: Were they
23 adequate?

24 MS. ROY: No.

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1 COMMISSIONER KLADNEY: Did they use open
2 captioning in Puerto Rico during the hurricane, the
3 open captioning on the TV where you can't shut it off
4 and the scroll goes along the bottom?

5 MS. ROY: I don't remember, I'm sorry.

6 COMMISSIONER KLADNEY: Thank you.

7 MS. ROY: I'm so sorry, I apologize.

8 COMMISSIONER KLADNEY: I have nothing at
9 this time further, Madam Chair.

10 CHAIR CANTU: Thank you. Commissioner
11 Yaki.

12 COMMISSIONER YAKI: Thank you very much,
13 Madam Chairman. First, I want to make a brief point.
14 One agency we didn't hear from was the Small Business
15 Administration, which has a substantial presence in
16 terms of economic injury disaster loans to homeowners
17 and to small businesses, and I think it'd be -- I
18 think we need to make sure that we send these
19 interrogatories to them as well.

20 Secondly, to the point that was being
21 made earlier, we can debate what the status of Puerto
22 Rico could be in the future or had it been changed
23 somewhere, but these are American citizens.

24 And the fact is that when you look at the

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1 relief aid to Hawaii in 1992 after Hurricane Iniki,
2 you did not see these congressional hearings going on
3 because the federal response to Hawaii, which is
4 represented by two United States Senators and two
5 members of Congress, was like that.

6 Secondly, on that score, the amount of
7 American mobilization of the military to aid Haiti
8 after their horrific quake compared to Puerto Rico
9 was better. So we can get into that as well, but not
10 at this time.

11 I do want to ask, though, a question of
12 Ms. Romero-Craft, and that is -- this is a question
13 I asked earlier to the folks at FEMA, and that is to
14 what extent, you know, do they or did they or have
15 they or will they, look at, for example, the
16 population that is about to be hit by a hurricane and
17 prepare accordingly in terms of language, in terms of
18 cultural and linguistic competency?

19 And did you -- and is that something that
20 you think that FEMA should be involved in for the
21 future in terms of how they deal with disaster
22 response? I mean, obviously there are going to be
23 some that happen and they can't deal with it because
24 it happened. But hurricanes you can track. So I

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1 just wanted to ask you opinion, what your thoughts
2 are on that.

3 MS. ROMERO-CRAFT: Yes, thank you so
4 much, Commissioner, for that question. I think that,
5 as Chair Cantu said earlier, this language access is
6 not a new issue, it's an issue that we've been dealing
7 with for years and years.

8 But I will say directly from our
9 experiences of working with folks who had been
10 displaced who were receiving TSA that were in
11 Florida, in Georgia, and beyond, they had great
12 difficulties when they would call to try to update
13 their applications, to try to submit documents.

14 You can imagine that these people did not
15 have access to computers, so they were trying to do
16 those that did have smartphones would try to access
17 the programming via their smartphones. And it was
18 not user-friendly. A lot of times the way that the
19 information was represented on their phone was not
20 the way that it was being stored or captured via the
21 programming through the FEMA program.

22 In addition, when folks would call that
23 were Spanish language-dominant only, they were met
24 oftentimes with folks who could not speak Spanish who

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1 were not bilingual. They did not have access to a
2 language line that could provide translation
3 assistance.

4 And so our hope and our suggestion would
5 be that yes, absolutely, in the face of what is
6 promising to be an active hurricane season, that FEMA
7 does prepare with adequate language assistance, with
8 bilingual workers. And I understand that they train
9 folks in advance and then they deploy them as
10 necessary. Hopefully, that won't be the case this
11 hurricane season.

12 But as someone who lives in a state that
13 is -- that frequently faces these disasters but is
14 much better equipped than Puerto Rico or the other
15 islands that were impacted by Hurricane Maria, that
16 they prepare accordingly and are ready with
17 materials, as well as language assistance that is
18 vitally necessary.

19 COMMISSIONER YAKI: Thank you very much.
20 Madam Chair, just indulge me for a second. One thing
21 I did note that I wanted to point out that goes into
22 the area of understanding who it is you're about to
23 serve is that I noted in the IG report that some of
24 the food that was being sent was high carbohydrate,

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1 high sugar, non-nutritious stuff to an island that
2 has a disproportionate number of folks who suffer
3 from hypertension, obesity, and diabetes.

4 I mean, these are the kinds of things
5 that FEMA needs to get a handle on. Because you don't
6 send a bunch of sugary snacks as a way to help people
7 who are living under abject conditions.

8 CHAIR CANTU: I appreciate that comment.
9 I also want to share with folks that the US Department
10 of Justice has the responsibility to coordinate among
11 the federal agencies a uniform and consistent way of
12 enforcing civil rights as to civil rights like Title
13 IX, it applies to civil rights like the Americans
14 with Disabilities Act.

15 And that has been the case, again, for a
16 long time. It's not a new set of circumstances that
17 we shouldn't be seeing disparities in how US citizens
18 are being treated under the Civil Rights Act.

19 The other thing I want to share with folk
20 is the effect on young people that their schools have
21 been turned into emergency shelters. And does that
22 disproportionately affect kids with disabilities and
23 kids with communication and lack of access to
24 computers at home in order to make up the deficits

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1 because they can't use their schools, sometimes for
2 months, sometimes for years.

3 And again, it's not a new problem. I had
4 the honor of representing the Secretary of Education
5 at a global conference, and the ministers of the
6 education from the Gulf and the Caribbean talked
7 about losing their school facilities for a very long
8 time after each storm and not having the resources to
9 help the kids make up the lost education
10 opportunities.

11 Have any of you anything to respond to
12 that specific problem of young people and how this
13 impacts them after a disaster?

14 MS. ROY: Yes, if it's okay. The island
15 of Vieques didn't have school for 11 months
16 afterwards, none of their facilities. They have nine
17 schools on that island and they were not equipped to
18 handle this. They all had damages -- the Salvation
19 Army, we put solar and water cisterns on them. They
20 didn't have running water. This is something that's
21 inexcusable.

22 Out of ours, and I'm looking this up to
23 make sure that it's the most accurate, one of nine
24 children suffered from depression during that time.

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1 That's our staff from our case management.

2 That is a high level of concern, not just
3 with having the education be, you know, something
4 that is on the back burner, but the depression ratio
5 in that equation, what that does to a child, thinking
6 that they are not as important as a mainlander.
7 Thinking that, well, we're United States citizen,
8 but how come no one's coming to help us. These are
9 things that were discussed by young children. That
10 is something that is concerning.

11 And just in that ratio context of the
12 school not being opened and them being properly
13 addressed with their needs. That was something that
14 parents also came to us individually and said how can
15 I help to nurture my child.

16 CHAIR CANTU: Thank you.

17 MS. ROY: Thank you.

18 CHAIR CANTU: Commissioners,
19 Commissioner Kladney.

20 COMMISSIONER KLADNEY: One more question,
21 Madam Chair. I was wondering, I'll address this to
22 Ms. Romero-Craft, what do you estimate or can you
23 estimate the breakdown between homes that were
24 destroyed as a direct result of the hurricane itself

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1 or those lost due to an inadequate response to the
2 hurricane and damage done to those homes?

3 MS. ROMERO-CRAFT: That is an excellent
4 question, and I would say I could not give you an
5 estimate on that.

6 But I will say that our work directly
7 with a nonprofit organization, Ayuda Legal Huracan
8 Maria, really highlighted the plight of Puerto Ricans
9 as it relates to homeownership and the different
10 property designations that you can have in Puerto
11 Rico, where, as the other panelists have shared,
12 people could have an ancestral home, something has
13 been passed down, but if they didn't have the proper
14 documentation to show FEMA, then they were denied
15 funding to get the housing repaired.

16 So I think that that is a key area where
17 we would recommend that FEMA do follow up and that
18 work closely with the government of Puerto Rico to
19 define all of those different property designations.
20 And then accordingly provide funding to get those
21 houses repaired.

22 I cannot tell you the number of folks who
23 either abandoned homes or who had to flee because
24 they knew that they were not going to get -- that

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1 they were denied FEMA funding and the home that they
2 had lived in for generations was not going to get
3 replaced or fixed. And had to then leave to the
4 mainland.

5 I can tell you specifically about what
6 happened in Florida and Georgia. Florida
7 specifically, the lack of affordable housing in the
8 state is at a crisis level.

9 So when you're having folks from Puerto
10 Rico come who have been designated for Section 8
11 housing in Puerto Rico on the island, and then come
12 to Florida and be put on waiting lists that were years
13 and years long, you find yourself with a housing
14 crisis that really is untenable. And I think you can
15 trace a lot of that to homelessness, children being
16 displaced even in schools here in the state of
17 Florida.

18 And so this has sort of a negative
19 cascading effect that needs to be addressed. And I
20 believe still can be addressed, by working closely
21 with the government of Puerto Rico and making sure
22 that FEMA addresses the differences in Puerto Rican
23 property law that impact how people may apply for and
24 receive funding to get the housing situation

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1 addressed.

2 COMMISSIONER KLADNEY: So what you're
3 saying is the houses that people abandoned never were
4 fixed, is that correct?

5 MS. ROMERO-CRAFT: That's correct. Or if
6 they are fixed, as I've mentioned, they have blue
7 tarps -- they're fixed inadequately. The huge fear
8 is that there's another natural disaster that happens
9 in Puerto Rico, another hurricane or certainly
10 another --an earthquake that may, you know.
11 Unfortunately, we've seen hurricanes and earthquakes
12 in Puerto Rico very recently.

13 And I think, you know, you -- the issue
14 that they have with the electrical grid in Puerto
15 Rico is constant and current. It is happening now.
16 People are experiencing blackouts on a weekly basis
17 even. So there are issues that need to be addressed
18 urgently but that we aren't talking about.

19 COMMISSIONER KLADNEY: I have one last
20 question. You said in your initial response that you
21 can't tell me the number of homes that were abandoned
22 or destroyed subsequent to the earthquake for lack of
23 response. When you say that do you mean that there's
24 a lot?

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1 I mean, if you can't tell me the amount,
2 okay, that's fine. But I'm trying to get a picture
3 of a little, moderate, a lot. Do you know what I'm
4 saying?

5 MS. ROMERO-CRAFT: Absolutely, and you
6 know, I can certainly follow up with that. We have
7 partners on the ground that I would be happy to
8 provide additional information to the Commission so
9 that they can review this.

10 But we have folks that were working
11 directly with impacted families. That was not work
12 that we were doing because it needs to be specific to
13 the island, but we can certainly follow up with that.

14 COMMISSIONER KLADNEY: If you can find
15 out that --

16 CHAIR CANTU: Commissioner,
17 Commissioner, I have Commissioner Kirsanow waving his
18 hand very patiently.

19 COMMISSIONER KLADNEY: I would just like
20 to tell that witness that she should take that
21 information and provide it to the same place she sent
22 her statement. Thank you, Madam Chair.

23 CHAIR CANTU: Thank you. Commissioner
24 Kirsanow.

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1 COMMISSIONER KIRSANOW: Yes, thank you,
2 Madam Chair, and thanks to all the panelists. This
3 has been very informative.

4 Do any of you have specific evidence that
5 the disparities in the provision of services or
6 funding by FEMA was the result of any racial animus
7 or invidious discrimination? Anybody can respond.
8 Thank you.

9 MS. ROMERO-CRAFT: I'm sorry --
10 Commissioner, I can say that we have received reports
11 from individuals that did feel that the lack of
12 response on an individual basis from certain
13 officials that were -- they were working with were as
14 a result. We filed our litigation as against FEMA
15 because we believe the proof is in the data.

16 We still have some outstanding Freedom of
17 Information Act requests to FEMA. And so, you know,
18 our point is you can also ignore what the President
19 said, what President Trump said, in the face of this
20 natural disaster and the treatment of Puerto Ricans.
21 And the treatment of Puerto Ricans that we are
22 discussing today that we are talking about really
23 shows that there was certainly a difference of
24 treatment of Puerto Ricans as opposed to other states

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1 that were found in similar circumstances.

2 So we do believe that there was some
3 racial animus as it relates to how Puerto Rico was
4 treated.

5 COMMISSIONER KIRSANOW: What was that
6 evidence that those individuals provided that caused
7 them to feel that there was racial discrimination or
8 animus?

9 MS. ROMERO-CRAFT: Well, in terms of
10 folks that were calling in, we had some individuals
11 who reported to us that they were told that they
12 needed to speak English in light of not having
13 bilingual folks able to assist them over the phone.

14 You know, in terms of folks who had
15 problems receiving not only TSA but other types of
16 assistance to fix their homes, we had similar turn-
17 away in terms of folks being told, you know, you don't
18 have the necessary paperwork, and not understanding
19 the cultural linguistic differences that provide, you
20 know, that create obstacles for folks to get the aid
21 that they need.

22 And you can speak to any Puerto Rican
23 about what they saw, what they viewed in terms of
24 what President Trump said, his action, and his

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1 behavior. And it starts from that point. And so you
2 know, we would submit that that is certainly
3 something that is tied to the response that was --
4 was had in Puerto Rico.

5 As well as the reimbursement program that
6 FEMA did install as it relates to major projects in
7 Puerto Rico. Knowing the fact that the US Government
8 understands the financial difficulties of Puerto Rico
9 is facing, to have a reimbursement program is
10 laughable, quite honestly.

11 Because if you have a commonwealth
12 territory that does not have funding to initiate
13 these programs to ask for reimbursement, then what
14 are you anticipating in terms of major public
15 infrastructure programs?

16 So I think that those all point to, for
17 our -- from our perspective sort of the abject failure
18 of the US Government to respond to the needs of Puerto
19 Rico and Puerto Ricans.

20 COMMISSIONER KIRSANOW: Thank you.

21 CHAIR CANTU: We're getting close on
22 time, so just -- I will put a finger and say I will
23 follow up myself and ask for further information from
24 this panel on this point. Because I'm very interested

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1 in what you all have eye witnessed and what you all
2 have heard from eyewitnesses with regards from
3 departures from policy, departures from practice,
4 unequal treatment.

5 I want to follow up. That was a very
6 interesting question and I do want to do the rest in
7 writing just to save the rest of us time in today's
8 panel. But I will let -- I will let you answer,
9 Charley Willison.

10 DR. WILLISON: Thank you. This is just
11 a broader point about disparities in disaster
12 responses overall.

13 I just want to emphasize that we do know,
14 there's a lot of scholarship on this point, that
15 communities of color and low income communities and
16 low income communities of color do -- are much more
17 at risk of adverse health and economic consequences
18 from natural disasters and from other public health
19 emergencies because of centuries of political and
20 socioeconomic oppression that have led to wealth
21 disparities, right.

22 So these communities are already more at
23 risk, creating racial disparities. And then we also
24 do know too that when looking at disaster

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1 allocations, that low income communities and
2 communities of color do also receive less allocation
3 of sufficient aid or of aid in general. And there's
4 a lot of scholarship on this as well that I'm happy
5 to share with the community.

6 And so while we -- in thinking about
7 implicit or explicit bias, even in the absence of
8 that evidence, there is a lot of evidence of direct
9 racial disparities in aid allocation.

10 CLOSING REMARKS, CHAIR NORMA V. CANTU

11 CHAIR CANTU: Commissioners, we're going
12 to end on time. Does that sound right? Okay, so
13 this brings us to the end of the briefing portion of
14 our meeting. I'd like to take this opportunity to
15 thank all our panelists. This has been tremendously
16 informative.

17 And on behalf of the entire Commission,
18 I wish to thank all of the panelists for sharing their
19 time and their expertise with us.

20 I also want to personally thank the
21 Commission staff for their efforts they made in the
22 last few months to pull this virtual briefing
23 together. I know personally it's a lot harder to do
24 it virtually than it is to do it in person face to

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1 face, so thank you. And I want to thank the staff in
2 advance for their effort to distill this information
3 presented in the briefing and to incorporate it into
4 the report. So I'm really grateful for all this hard
5 work.

6 The record for this briefing will remain
7 open for the next 30 days. If panelists or members
8 of the public would like to submit materials, they
9 can mail to the US Commission on Civil Rights, Office
10 of General Counsel, 1331 Pennsylvania Avenue, NW,
11 Suite 1150, Washington, DC, 20425.

12 There is an email address that I'd like
13 to say it slowly, and that is Femabriefing@usccr.gov.
14 And those materials need to be sent by email or posted
15 no later than July 26, 2021. So I will repeat the
16 email one more time, femabriefing@usccr.gov.

17 Thank you all, thank you, Commissioners.
18 Thank you, staff. I'll do a hook 'em horns because
19 I'm a Texan.

20 COMMISSIONER YAKI: No, no, that's not
21 what I am getting at -- Madam Chair, point of order.

22 CHAIR CANTU: Yes, please.

23 COMMISSIONER YAKI: I just wanted to ask
24 leave of the Commission to allow Commissioner

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1 Adegbile to submit his opening statement probably at
2 some point during the time, but to give a timeline,
3 given the circumstances right now. I know that he
4 very much wanted to be a part of this as a co-sponsor
5 of this with me, and I wanted to make sure that he
6 had leave to give -- to provide a written statement
7 for the record.

8 CHAIR CANTU: With no objection, that is
9 an excellent -- excellent idea. Any other -- any
10 other processes? Going once, going twice?

11 (Whereupon, the above-entitled matter
12 went off the record at 2:43 p.m.)

13

Appendix B Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas



U.S. Commission on Civil Rights Public Briefing:
Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas
 Thursday, October 21, 2021

Expert Panels: 12:00 pm – 2:55 pm ET

AGENDA

Via Livestream: <https://www.youtube.com/user/USCCR/videos>

Introductory Remarks: 12:00 – 12:10 pm

I. Panel 1: 12:11 – 1:25 pm

- Francisco Sanchez, President, Emergency Management Association of Texas
- Dr. Tricia L. Wachtendorf, Director of the Disaster Research Center, University of Delaware
- Brittany Perrigue-Gomez, Attorney and Counselor at Law, Texas Rio Grande Legal Aid
- John Beard, Jr., Founder, President & CEO, Port Arthur Community Action Network
- Veronica Chapa Gorczynski, President, East End District
- Dr. Laura Stough, Professor of Educational Psychology & Asst. Director, Center on Disability and Development, Texas A&M University

II. Break: 1:25 – 1:35 pm

III. Panel 2: 1:35 – 2:50 pm

- Chauncia Willis, Co-Founder & Chief Executive Officer, Institute for Diversity and Inclusion in Emergency Management
- Kathy Flanagan-Payton, President & CEO, Fifth Ward Community Redevelopment Corporation
- Julia Orduña, Southeast Texas Regional Director, Texas Housers
- Dr. Shao-Chee Sim, Vice-President for Applied Research, Episcopal Health Foundation
- Ben Hirsch, Co-Director, West Street Recovery
- Tomas Aguilar, Disaster Recovery Coordinator, Living Hope Wheelchair Association

Closing Remarks: 2:50 – 2:55 pm

***Public Comments will be written testimony only

U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC BRIEFING MEETING **EDITED**

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THURSDAY, OCTOBER 21, 2021

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The Commission convened via Video
Teleconference at 12:00 p.m. EDT, Norma V. Cantu,
Chair, presiding.

PRESENT:

- NORMA V. CANTU, Chair
- J. CHRISTIAN ADAMS, Commissioner
- DEBO ADEGBILE, Commissioner
- STEPHEN GILCHRIST, Commissioner
- GAIL HERIOT, Commissioner
- PETER N. KIRSANOW, Commissioner
- DAVID KLADNEY, Commissioner
- MICHAEL YAKI, Commissioner
- MAURO MORALES, Staff Director

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STAFF PRESENT:

ROBERT AMARTEY
 LASHONDA BRENSON
 BARBARA DE LA VIEZ
 PAMELA DUNSTON, Chief, ASCD
 LATRICE FOSHEE
 JEFF KNISHKOWY
 MICHELE RAMEY
 JOHN RATCLIFFE
 MARIK XAVIER-BRIER

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART
 ALEC DUELL
 CARISSA MULDER
 RUKKU SINGLA
 IRENA VIDULOVIC

ALSO PRESENT:

PANEL 1:

FRANCISCO SANCHEZ, President, Emergency Management
 Association of Texas
 DR. TRICIA L. WACHTENDORF, Director of the Disaster
 Research Center, University of Delaware
 BRITTANY PERRIGUE-GOMEZ, Attorney and Counselor at

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Law, Texas Rio Grande Legal Aid

VERONICA CHAPA GORCZYNSKI, President, East End
District

DR. LAURA STOUGH, Professor of Educational
Psychology and Assistant Director, Center on
Disability and Development, Texas A&M University

PANEL 2:

CHAUNCIA WILLIS, Co-Founder & Chief Executive
Officer, Institute for Diversity and Inclusion in
Emergency Management

KATHY FLANAGAN-PAYTON, President & CEO, Fifth Ward
Community Redevelopment Corporation

JULIA ORDUÑA, Southeast Texas Regional Director,
Texas Housers

DR. SHAO-CHEE SIM, Vice-President for Applied
Research, Episcopal Health Foundation

BEN HIRSCH, Co-Director, West Street Recovery

TOMAS AGUILAR, Disaster Recovery Coordinator,
Living Hope Wheelchair Association

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P R O C E E D I N G S

(12:02 p.m.)

CHAIR CANTU: Welcome and good afternoon to Commissioners, Commission staff, witnesses and the public watching and listening. I am Commissioner Chair Cantu. The briefing will come to order.

I. INTRODUCTORY REMARKS BY CHAIR NORMA V. CANTU

This is the briefing of the U.S. Commission on Civil Rights, on Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas.

It is 12:02 on October 21 and the year is 2021. Commissioners virtually present at this briefing in addition to me are Commissioner Adams, Commissioner Adegbile, Commissioner Gilchrist, Commissioner Heriot, Commissioner Kirsanow, Commissioner Kladney and Commissioner Yaki. A quorum of the Commission is present.

I note for the record that the Staff Director and the court reporter are present, and two Spanish language interpreters are on the line as well.

I wish to welcome everyone to our briefing, Civil Rights Implications of Disaster Relief: Hurricane Harvey in Texas.

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1 This briefing assists the Commission in
2 three purposes. Review the Federal Emergency
3 Management Agency and its role in disaster
4 preparedness and response. Two, evaluate efforts by
5 FEMA to comply with the Robert T. Stafford Disaster
6 Relief and Emergency Act along with other federal
7 civil rights and policies. And three, compare the
8 response of FEMA to significant hurricane systems,
9 including, but not limited to, Hurricanes Harvey and
10 Maria.

11 Today's briefing will focus on the civil
12 rights implications of the federal response and
13 impact of Hurricane Harvey in Texas by receiving
14 testimony from subject matter experts such as
15 government officials, academics, advocates and
16 impacted persons.

17 Before we begin our briefing, I'd like to
18 address a few housekeeping items. I share deep thanks
19 to the Commission staff who researched and brought
20 today's briefing into being, including the expert
21 team who works on the logistics for which this virtual
22 environment presents a whole host of additional
23 challenges. And I thank Staff Director Mauro Morales
24 for his leadership.

25 During the course of this testimony and

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1 question and answer period, I caution all speakers,
2 including our Commissioners, to refrain from speaking
3 over each other for the ease of the transcription.

4 Additionally, I will need to cue our
5 staff behind the scenes for the appropriate video and
6 audio support. So please wait to speak until I have
7 called on you.

8 Panelists, you each have seven minutes to
9 speak. Please note to ensure that we have sufficient
10 time for our discussion this morning, I will enforce
11 the seven-minute time limit. Please monitor your
12 time so you do not risk my cutting you off in mid-
13 sentence.

14 I will strictly inform the time
15 allotments given to each panelist to present his or
16 her statement. And unless we did not receive your
17 testimony until today, you may assume that we have
18 read your testimony statements. So, you don't need
19 to use time to read them to us as part of your opening
20 remarks.

21 After the Panel presentations,
22 Commissioners will have the opportunity to ask
23 questions within the allotted period of time. And I
24 will recognize Commissioners who wish to speak. I
25 ask my fellow Commissioners to do our part and keep

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1 our Q&A concise. Please be brief.

2 Today's briefing features 11
3 distinguished speakers who will provide us with a
4 diverse array of viewpoints. Panel 1 will consist of
5 speakers who will discuss the role and
6 responsibilities in the execution of federal aid in
7 response to natural disasters (audio interference)
8 advocacy, non-profit relief groups and academics who
9 will discuss the impact of the federal government
10 response on the impacted communities.

11 With those bits of housekeeping out of
12 the way, we're now going to proceed to the briefing.
13 I turn now to Commissioner Adegbile for opening
14 remarks. Commissioner, please proceed.

15 **II. REMARKS BY COMMISSIONER DEBO ADEGBILE**

16 **AND COMMISSIONER MICHAEL YAKI**

17 COMMISSIONER ADEGBILE: Good morning and
18 thank you, Madam Chair. I just want to take this
19 opportunity to thank our panelists for participating
20 today in our Commission virtual briefing on the civil
21 rights implications of Hurricane Harvey.

22 We originally envisioned being present
23 with you in Texas and being on the ground in the way
24 that the Civil Rights Commission through history has
25 traveled around the country to examine the civil

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1 rights implications of issues where they exist.

2 Of course, we're in a pandemic, and it
3 has caused us to recalibrate in many ways. And so
4 this briefing, like many of our briefings over the
5 last several months, takes place virtually. And we
6 thank you for your patience and accommodation.

7 It was our hope that had we been on the
8 ground, we would also be able to hear from impacted
9 persons and have a public comment session. But, alas,
10 our need to recalibrate in this way has caused us to
11 alter our plan.

12 I want to thank our Texas State Advisory
13 Committee for its work in conducting a series of
14 briefings on the government response to hurricane
15 disasters in Texas and for issuing what we call an
16 advisory memo on this topic this past May. It has
17 helped to inform our work and our state advisory
18 committees make a vital contribution to the work of
19 the U.S. Civil Rights Commission.

20 It is unfortunate, however, that
21 representatives from the state and local government
22 as well as the SBA declined the invitation to
23 participate in this briefing. But I hope they will
24 come forward and provide comments or written
25 testimony.

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1 We encourage everyone impacted by the
2 hurricane who has an experience or story or
3 information that they wish to share as part of the
4 Commission's work to send their written comments for
5 consideration as part of our analysis. And those
6 remarks can be sent to harveybriefing@usccr.gov no
7 later than November 22.

8 With this, I would finally like to thank
9 Commissioner Michael Yaki, who had the genesis of
10 this idea as I recall it and was the first person to
11 suggest that the Commission undertake this
12 examination. With that, I thank you very much and
13 look forward to your testimony.

14 CHAIR CANTU: Mr. Yaki, please?

15 COMMISSIONER YAKI: Thank you very much,
16 Madam Chair. And thank you, Commissioner Adegbile,
17 for your remarks.

18 I guess I'm sort of the one person who
19 can say that I've actually lived through a natural
20 disaster. Behind me is the background of the Golden
21 Gate Bridge, and some 30 odd years ago our region was
22 shaken by the Loma Prieta earthquake.

23 But it didn't really end there. And
24 that's really why I wanted to look at what happened
25 here because as much as the disaster recovery needed

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1 response is important, the recovery is even more so,
2 how we build back communities, how we put people back
3 in homes. I want to make sure that we try to make
4 them whole. That is really the important mission of
5 what the federal government does with its disaster
6 relief funds.

7 Unfortunately, the reality on the ground
8 is often a lot different. And the genesis of this
9 actually came because of the disparity that I saw
10 between the response to Hurricane Maria in Puerto
11 Rico, which we will be going through later this year,
12 and Hurricane Harvey.

13 But then, of course, as delve further
14 down, we find many of the same disparities that we
15 saw on the macro between the two regions and the micro
16 level inside the devastated area of Hurricane Harvey
17 itself. And that's what we really want to focus on
18 today.

19 And so, I hope for the people who are
20 going to be here speaking today, I have read all of
21 your remarks. I appreciate them. They're all
22 powerful. And I really want you to focus for the
23 purpose of this meeting, for the purpose of this
24 hearing, on the issues that we are here to discuss,
25 which is whether or not people, because of their skin

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1 color, because of their socioeconomic status, are
2 treated as second class citizens in the federal
3 relief efforts following a disaster such as this.
4 That to me is what I'm concerned about. That's why
5 I ask. And we put this Commission together, joined
6 together, to put this hearing and this project
7 together. But it's really going to be up to you
8 providing information on the ground to do it.

9 I dealt with that when I was a chief of
10 staff for a member of Congress. I actually ended up
11 handling most of the relief efforts, directing them
12 because I did not see them going where they needed to
13 go. People are doing the same thing with the same
14 thing. And we want to hear from you. I want to thank
15 all of you for your hard work and for your efforts.
16 And I look forward to your testimony. Thank you very
17 much, Madam Chair.

18 **III. PANEL 1**

19 CHAIR CANTU: Thank you, Commissioner
20 Yaki. Let me now introduce our panelists.

21 This morning we're going to be hearing
22 first from Francisco Sanchez, President, Emergency
23 Management Association of Texas. Our second speaker
24 is Dr. Tricia Wachtendorf, Director of the Disaster
25 Research Center at the University of Delaware.

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1 Our third speaker, Brittany Gomez,
2 attorney and counselor at law, Equal Justice Works,
3 Texas Rio Grande Valley Legal Aid. Our fourth speaker
4 -- I guess I added Valley, sorry, Rio Grande Legal
5 Aid.

6 Our fourth speaker is Veronica Chapa
7 Gorczynski, President, East End District. Our fifth
8 and final speaker for Panel 1 is Dr. Laura Stough,
9 Professor of Educational Psychology. Mr. Sanchez,
10 would you please proceed?

11 MR. SANCHEZ: Sure. Madam Chairwoman
12 Cantu, thank you so much for the invitation. Also,
13 I appreciate the weathervane in the background.

14 As an emergency manager, I appreciate
15 technology, but a weathervane is resilient. It
16 doesn't require power. It's accurate. And the
17 information is in real-time.

18 So, I appreciate that statement in the
19 background and especially what you're doing here in
20 terms of looking at Hurricane Harvey. It was for us
21 a transformative event for millions of residents in
22 Houston-Harris County and the entire State of Texas.

23 As the President of the Emergency
24 Management Association of Texas, I had the
25 opportunity to work with a lot of colleagues from

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1 first responders to emergency managers or partners,
2 either both in public and private sectors, including
3 nonprofits. So, the perspective here, you know, it
4 is an accumulation of those insights. And it's
5 timely, and it's compelling.

6 When it comes to FEMA and other federal
7 agencies involved in disaster response and recovery,
8 I do want to applaud and echo support after the deep
9 dive they're taking into looking at the issues of
10 diversity, equity and inclusion. It's overdue. And
11 we can't do enough quick enough to catch up to where
12 we need to be. So, at the federal level, there's a
13 lot of folks taking a look at that seriously. And
14 so, I appreciate that.

15 To set the groundwork, Harvey was a storm
16 of superlatives, 27 trillion gallons of rain.
17 Rainfall amounts anywhere from 25 to 51 inches, and
18 a third of Houston was underwater. It lowered the
19 earth's crust by an inch in less than a week.

20 Second to Katrina, it was the most
21 costliest storm on record with \$125 billion in
22 damage, almost 35 residents in shelters across the
23 state taken out of their home and having to go to
24 shelters and a tragic 82 deaths.

25 For Harris County, let me set the tone

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1 for what Harris County is. For those of you not from
2 Texas or on the Commission not familiar with us, it's
3 the third most populous county in the country, 1,777
4 square miles. One of the most diverse in the nation.

5 And we've got 34 cities, including the
6 City of Houston, which is the nation's fourth largest
7 city. If you take unincorporated Harris County, that
8 would be the fifth largest city in the country. So,
9 a very urban area that's unique.

10 Here we had to do more than 120,000
11 rescues, 1.3 million impacted individuals, that's
12 about 75,000 households, nearly 20,000 residents in
13 shelters, \$125 million damage to county assets and
14 almost a billion dollars in total losses. If you
15 want to look at folks, it's almost half a million,
16 450,000 folks in our community, had to apply for FEMA
17 assistance.

18 We saw for the first time -- not for the
19 first time but in stark relief was the impact of this
20 disaster on our most vulnerable and least prepared
21 populations, disparity in recovery rates for those
22 who have flood insurance and the have-nots.

23 Harris County in response to that and its
24 implications of Harvey formed a long-term recovery
25 committee that sought to be innovative, bringing

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1 together government, private and nonprofit partners
2 together to do the most we could with the scarce
3 number of resources.

4 Out of that we've had some best
5 practices. We've assisted more than a million
6 individuals together, 75,000 households roughly with
7 non-FEMA aid of local dollars raised between
8 government, nonprofits and our philanthropic
9 partners.

10 But I appreciate this is happening
11 several years later because as Commissioner Yaki
12 mentioned, recovery takes time. A 2020 survey by the
13 Hobby School of Public Affairs at the University of
14 Houston says that close to 20 percent of respondents
15 were still displaced by Harvey even this far along.

16 And we have to stop looking at
17 traditional metrics, like what defines federal
18 poverty? The United Way has a metric called ALICE.
19 It's asset limited, income constrained and employed.
20 They're working, but they're still barely surviving.

21 In Harris County, the ALICE figure is 48
22 percent with limited aid and insurance programs
23 because of where they are on the poverty level.

24 And you look at how programs can help.
25 You can have up to \$35,000 in assistance from FEMA

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1 for home repair. Even if you were to have that
2 number, it forces many to remain in substandard
3 housing, but that said, \$35,000 is the maximum.

4 I can tell you there's a disparity. You
5 have flood insurance. The average payout was more
6 than \$100,000 for Harvey. If you had a FEMA
7 assistance, individual assistance, the average payout
8 was \$6,000 or so. It's a huge disparity.

9 In terms of, again, I want to be
10 supportive and applaud the efforts to take a look at
11 these issues, but we need to look at diversity, equity
12 inclusion very robustly, determined and genuinely if
13 we want to make changes to the recovery, which is the
14 most essential element in the recovery, in the
15 emergency management cycle.

16 I think we need to look at our federal
17 programs. We should look at assistance programs that
18 benefit renters. Historically, the underserved,
19 marginalized and those affected by long-term poverty
20 and equality and climate change are less likely to be
21 homeowners. Single mothers fit that category.

22 And look at how the pandemic impacted
23 Black, Hispanic and low-income neighborhoods to a
24 greater degree. And that comes on the heels of
25 Harvey, other storms and now the pandemic.

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1 I think there should be transparency to
2 the process. Consistent feedback from residents
3 across the board is cumbersome. It's confusing. And
4 it can be intimidating.

5 I've been fortunate that I haven't had to
6 seek FEMA assistance when I've been impacted. But
7 I've gone through and gone through that process to
8 see what it's like, and it's challenging. A single
9 aid portal would be helpful. Publish a rubric for
10 approval.

11 And there are some things that are
12 intimidating for folks in these vulnerable
13 communities. The information, it says on the
14 website, can be shared even though they don't do it.
15 The website says they it can be shared with
16 Immigration and Customs Enforcement. It can freeze
17 someone's interest in seeking recovery.

18 You know, SBA, \$150 million, 15 percent
19 of post-Harvey aid, that can assist renters. It can
20 assist small business, those folks like MWBEs. I
21 think it's an underutilized program that could
22 benefit from some outreach in our communities.

23 Disparities in the cost of benefit
24 rations in terms of how you do things like national
25 flood insurance and mitigation projects. The cost of

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1 benefit ratio being like roughly 1:10 leads to
2 investing in neighborhoods that have sufficient and
3 well-priced housing. That leaves communities that
4 are along bayous that are susceptible to flooding,
5 that are low-income, because they will never meet
6 that criteria of a 1:10 benefit ratio.

7 We have homes in impoverished communities
8 that will be impacted over and over. The use of
9 technology, we started doing that a lot during COVID,
10 but we need to recognize that older residents, the
11 disabled, the less tech savvy that are in these
12 communities still need in-person, onsite assistance.

13 Before I close, I'll get on my soapbox
14 really quickly on three items. And one is timing.
15 Some programs are quick to get on the ground. But
16 sometimes it can take months or years before some of
17 those federal resources make it to the ground level
18 like mental health, case management, housing repair.
19 That further puts vulnerable communities in
20 situations where they linger and languish before help
21 gets on the ground.

22 And we raise those local dollars. We
23 want to meet unmet needs that are not covered by our
24 federal partners. We then have to spend that money
25 on basic needs and for the kind of assistance that is

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1 eventually funded by the federal government. So the
2 quicker the dollars get here, the more can be invested
3 and the more we can raise those local dollars to meet
4 needs and make that effort go further.

5 And I'll close by saying that our heroes
6 are the case managers. I know emergency management
7 gets a lot of the credit, but case managers are here
8 for the long haul. There are still emergency managers
9 working on Harvey cases. And they bear the brunt of
10 it.

11 We've got folks it is their best friend
12 if we have to reach out to them. Several months later
13 you've hit bureaucratic hurdles, and they become
14 frustrated. And it takes years before they close
15 those cases. But they are our frontline workers.
16 And I will be reaching out to our nonprofit partners
17 and case managers to submit some testimony for you so
18 you can hear what's happening on the ground and the
19 kind of stories they're hearing from folks that are
20 impacted by disasters. And so thank you so much for
21 the opportunity. I'm sorry.

22 COMMISSIONER YAKI: You're muted,
23 Commissioner. You're muted, Commissioner.

24 CHAIR CANTU: Thank you. The seven-
25 minute sign went up. That was for the next speaker,

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1 Mr. Sanchez.

2 MR. SANCHEZ: Oh, sorry.

3 CHAIR CANTU: I really do appreciate your
4 comments. Let's now hear from Dr. Wachtendorf.

5 DR. WACHTENDORF: I'd like to thank the
6 United States Civil Rights Commission for the
7 opportunity to share testimony with you today.

8 I am a Professor of Sociology at the
9 University of Delaware, where I direct the Disaster
10 Research Center. Our Center has been examining the
11 social aspects of disasters since 1963. This has
12 been the focus of my own work for the past 25 years.

13 Although today's briefing is on Hurricane
14 Harvey, the Commission asked me here today in
15 particular to speak to what we know about
16 vulnerabilities too and inequities during disasters.

17 And let me say this, we know a great deal.
18 Many of the lessons have been long learned yet those
19 vulnerabilities persist. Our failure to adequately
20 address them contributed to many of the problems that
21 have been noted in previous testimony to the
22 Commission.

23 I would like to highlight two themes here
24 today. First, without addressing routine
25 vulnerabilities, inequities in response are

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1 inevitable. Second, failure to adequately address
2 the process of recovery leads to disparate outcomes
3 in disasters.

4 Let us begin before disaster strikes.
5 Well established over a half century, a scholarship,
6 is that disasters exacerbate pre-existing
7 circumstances. It should come as no surprise that a
8 community that cannot deal with routine rush hour
9 traffic will experience challenges evacuating its
10 residents nor should we be surprised when routine
11 services that do not adequately address the needs of
12 those living with varying abilities fall short when
13 those services are significantly stressed.

14 Others testimony is correct to point out
15 specific problems that emerged during Hurricane
16 Harvey, but let me be clear. We continue to not take
17 seriously enough the fact that mitigating routine
18 vulnerabilities would serve to mitigate the
19 disparities communities experience from disasters
20 like Harvey.

21 For example, stormwater systems are meant
22 to mitigate the impact of flooding, yet the condition
23 and capacity of those systems are insufficient in
24 less advantaged areas. And as planner Marcus
25 Hendricks notes, racial neighborhood composition is

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1 a strong predictor of the stormwater infrastructure
2 available.

3 It is then no surprise when systematic
4 research by other scholars found that flooding from
5 Harvey was greater in areas with a higher proportion
6 of non-Hispanic Black and socioeconomically deprived
7 residents. It's a pretty straightforward line
8 between disparities in attention to stormwater
9 infrastructure and disparities in hurricane flooding.

10 This is not only a problem in the City of
11 Houston or the State of Texas. It is a critical
12 infrastructure issue setting the stage across the
13 country for flooding disparities, including those of
14 my own state to see repetitive flooding even after
15 moderate rainfalls.

16 As another example, those protected by
17 civil rights regulations must be prioritized in the
18 planning process. Problems are often a result of the
19 exclusion of the disability community from this
20 process relegating their perspectives to strictly
21 health and medical functions rather than seeing it as
22 integral to functions such as communications or
23 transportation.

24 At other times, simply doing something
25 can be used as a justification that steps have been

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1 taken even if it does not fully or appropriately
2 address the problem. In my own work I've found that
3 while some shelters may have the needed
4 accommodations for people with disabilities, the
5 services inside may be unknown or inaccessible to the
6 people for whom they are meant to help.

7 Issues related to communication with and
8 to people with disabilities during Hurricane Harvey
9 point to similar problems. In her examination of
10 emergency planning for people with disabilities in
11 California, Jennifer Lazo found that organizations
12 expected that others would begin the process of
13 changing how plans were created and that others would
14 take action while they waited to follow.

15 Active, purposeful movement towards
16 change is necessary and necessary by the whole
17 community of organizations before disaster strikes.

18 Allow me to address the second important
19 issue. Failure to adequately address the process of
20 recovery leads to disparate outcomes. Considerable
21 work has been done in the area including disparities
22 and issuing buyouts, access to flood insurance and
23 grants and the ability to repay assistance loans.

24 For years, I've heard from disaster
25 survivors of the challenges associated with post-

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1 disaster recovery processes. In many ways, it's been
2 clear that unless there's been a serious injury or
3 loss of life in the family, the recovery process can
4 be considerably more stressful than the disaster
5 impact period.

6 Research by Greer and Trainor and their
7 work on Hurricane Sandy supports this. Survivors
8 highlighted the amount of complex paperwork
9 associated with the aid process, unfavorable
10 interactions with government employees and a sense
11 that the rules were constantly changing.

12 Hurricane Harvey was five years after
13 Sandy and the stories repeat themselves. Checkpoints
14 with deadlines. One can't get a contractor. One
15 doesn't have the original of a particular document.
16 It takes time, deadlines pass, a file didn't upload,
17 processes changed and the person seeking assistance
18 needs to start again.

19 Take this widespread and significant
20 challenge and compound it with the vulnerabilities of
21 particular segments of our community. Perhaps it's
22 a lack of accessibility for those with a disability
23 or when document or technology literacy is required
24 to apply for assistance, those without competencies
25 can be disproportionately left out.

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1 Those without access to technologies or
2 unlimited data plans to support their access are
3 further disadvantaged.

4 For many of us experiencing challenges
5 during a disaster, we remember who we last
6 encountered. In the case of the recovery process,
7 this may be FEMA even when the problems in recovery
8 processes are across multiple agencies. In the case
9 of the response process, it may be a particular
10 responder who is unable to address a need in the line
11 of defense.

12 This is not to say that there are not
13 times when officials violate rights of disaster
14 survivors. Certainly, the Commission must attend to
15 those isolated acts, both intended and unintended
16 discrimination.

17 But this cannot be our only focus. It is
18 not an either-or issue. Doing so can deflect
19 responsibility unto emergency management and away
20 from the long-term investment that sets the stage for
21 inequities and violations of civil rights
22 protections, even those that are unintended.

23 I would like to conclude by calling on
24 the Commission to consider how the problems noted
25 throughout a particular disaster life cycle are

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1 rooted in pre-event conditions that serve as
2 precursors to the disaster itself. Thank you.

3 CHAIR CANTU: Thank you, Dr. Wachtendorf.
4 I really appreciate your comments.

5 Our next speaker is Ms. Gomez. Ms.
6 Gomez, we'll hear from you now.

7 MS. PERRIGUE-GOMEZ: Thank you to the
8 Commission for inviting me to talk to you today. I
9 work for Texas Rio Grande Legal Aid, which is the
10 nation's second largest legal aid provider and the
11 largest in Texas.

12 Sixteen counties in the TRLA service area
13 were included in the disaster declaration for
14 Hurricane Harvey. Thousands of low-income Texans
15 lacked access to civil legal representation. And the
16 effects of climate change and natural disasters will
17 continue to negatively impact access to legal
18 assistance across the country but specifically in
19 Texas, which is considered the most disaster-prone
20 state in the U.S.

21 At TRLA we represent a resilient client
22 population who are made vulnerable often by the
23 actions of governments and lawmakers.

24 This is no doubt the case of those
25 survivors who were and continue to be impacted by

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1 legal issues caused by Hurricane Harvey and the
2 inequitable distribution of disaster assistance funds
3 funded and administered by the federal government and
4 the State of Texas.

5 From August 2017 to July 2019,
6 approximately 2,900 Hurricane Harvey survivors
7 applied for legal assistance with TRLA. Their legal
8 issues included general civil legal matters as well
9 as FEMA and SBA applications and appeals and title
10 clearing for the Texas General Land Offices
11 Homeowner's Assistance Program or HAP.

12 Four years after Hurricane Harvey, we
13 still represent survivors seeking access to financial
14 disaster assistance funds from the State of Texas'
15 HAP program.

16 Addressing the accessibility issues for
17 disaster survivors, more than half of the Hurricane
18 Harvey survivors who applied for legal assistance
19 with TRLA were elderly and nearly one-third
20 identified as having a disability, all of them living
21 on fixed incomes.

22 Many of our clients struggled with
23 technology, internet access and live-in rural areas
24 where there was no public transportation. For
25 example, a disaster survivor in Sinton, Texas, would

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1 need to drive approximately one hour roundtrip to
2 access a disaster recovery center in either Corpus
3 Christi, Aransas Pass or Rockport, Texas. This often
4 left them to relying on others to drive them or
5 without access to FEMA and other disaster agencies at
6 all.

7 The Stafford Act requires FEMA to
8 establish eligibility criteria for the Individuals
9 and Households Program or IHP.

10 FEMA is required to include provisions
11 for ensuring that the processing of applications and
12 other relief and assistance activity shall be
13 accomplished in an equitable and impartial manner
14 without discrimination.

15 FEMA shall prescribe rules and
16 regulations, including criteria, standards and
17 procedures for determining eligibility for
18 assistance. And FEMA shall issue rules which provide
19 for the fair and impartial consideration of IHP
20 appeals.

21 Yet in the regular course of operation,
22 FEMA consistently relies on the use of unpublished
23 rules in its administration of the Individual and
24 Households Program. FEMA has stated its published
25 policies, the Individual Assistance Program and

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1 Policy Guide, does not actually have the force or
2 effect of law. FEMA's published rules are so vague
3 that hundreds of employees and inspectors who apply
4 those rules fail to do so consistently, resulting in
5 the inequitable distribution of critical funds to
6 disaster survivors.

7 FEMA also uses unpublished rules to
8 instruct inspectors who are not required to have any
9 prior construction experience or knowledge on how to
10 determine whether damage observed after a disaster
11 was actually caused by the disaster.

12 FEMA considers inspectors to be fact
13 finders not eligibility determiners. But in reality,
14 inspectors make eligibility determinations based on
15 the damages they choose to catalog during an
16 inspection.

17 Because there is no published standard of
18 what is categorized as disaster caused damage,
19 inspections are highly subjective and vulnerable to
20 implicit bias. This was true after Hurricane Harvey,
21 and it remains true today.

22 When a disaster survivor is denied
23 assistance, the language on a FEMA denial language is
24 so ambiguous that no one can effectively appeal the
25 decision without knowing what standard FEMA used to

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1 issue those decisions.

2 When a FEMA standard denial letter, which
3 is the home safe to occupy letter, which states FEMA
4 has determined you are not eligible for housing
5 assistance because the damage caused by the disaster
6 did not make your home unsafe to live in.

7 This letter does not include any facts
8 about what the inspector viewed or deemed to be
9 disaster caused damage and leaves applicants guessing
10 as to why they were ineligible for housing assistance
11 in the first place.

12 It was also our experience after
13 Hurricane Harvey that appeals with similar facts and
14 supporting documentation would yield different types
15 of assistance or lack of assistance.

16 This can likely be attributed to FEMA's
17 reliance on surge capacity hiring, lack of uniform
18 training, failure to implement effective quality
19 control measures and lack of transparent standards.

20 In Texas, the disaster recovery structure
21 is bifurcated with FEMA administering the Housing
22 Assistance Program in the state through Texas Health
23 and Human Services administering the Other Needs
24 Assistance Program or ONA.

25 You would be hard pressed to find a

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1 disaster survivor after Hurricane Harvey who
2 understood the difference. Survivors often thought
3 the ONA program was administered by FEMA and not the
4 state. This is likely due to ONA determinations being
5 written on FEMA letterhead, and ONA appeals being
6 submitted to FEMA and then forwarded to the state.

7 FEMA's employees would often tell
8 survivors that they don't provide assistance for ONA,
9 leading survivors to believe that ONA assistance was
10 actually not available to them.

11 One benefit of the ONA Program being
12 administered by the state is that survivors are
13 afforded additional levels of appeal to include a
14 telephonic fair hearing under the Texas
15 Administrative Code.

16 This puts the burden back on the state to
17 prove that they have complied with their policies and
18 procedures. In our experience, HHSC has had
19 difficulty proving this compliance with policies and
20 procedures because the policies and procedures were
21 actually written by FEMA. Additionally, HHSC was
22 tasked with proving that FEMA inspectors complied
23 with FEMA policies and procedures, which it often
24 could not do.

25 Requesting a fair hearing is arduous and

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1 traumatizing for a disaster survivor. But if FEMA
2 employees and inspectors were properly trained and
3 more effective quality control measures were
4 implemented, fair hearings would be the exception,
5 not the standard.

6 Shifting focus to barriers and inequities
7 that exist for low-income renters in long-term
8 recovery, the State of Texas, in its allocation of
9 CDBG-DR funds, excludes renters entirely.

10 The funding that was allocated in lieu of
11 financial assistance to renters was provided to
12 landlords and developers instead. Renters are
13 already at a disadvantage when recovering after a
14 disaster in comparison to homeowners as rental units
15 are destroyed, and it may take years for those
16 properties to be rebuilt.

17 Often renters must leave their
18 communities and relocate elsewhere, and the brunt of
19 the cost is shouldered by them. One may be inclined
20 to believe that renters incur less damage than
21 homeowners because they do not own the property they
22 reside in, but that belief would be misinformed.

23 Affordable housing options that are
24 available decreased after Hurricane Harvey. And this
25 resulted in renters having to confront a higher cost

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1 of living, additional security deposits and other
2 initial costs that are often prohibitive.

3 Further, renters will continue to incur
4 additional damages over time. As rental properties
5 are rebuilt, they will likely not be affordable. And
6 even though built with funding intended to address
7 damage from Hurricane Harvey, there will be no
8 preference for renters impacted by Hurricane Harvey.

9 In the 16 counties of the TRLA service
10 area, renters were more likely to be Black or Hispanic
11 without adequate insurance coverage and have a
12 difficult time navigating FEMA and the State of
13 Texas' Disaster Assistance Program.

14 Even though renters are more often Black
15 and Hispanic, more likely to be low-income and more
16 likely to lack recovery funds from other sources, the
17 State of Texas still did not provide specific CDBG-
18 DR funding to them but instead created rental
19 assistance programs for homeowners who are more
20 likely to be white, non-Hispanic and who are
21 temporarily displaced while the state rebuilds or
22 repairs their homes.

23 Thank you again to the Commission for
24 your time.

25 CHAIR CANTU: Thank you, Ms. Gomez. Ms.

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1 Gorczynski, we will now hear from you.

2 MS. CHAPA GORCZYNSKI: Hi. Good
3 afternoon. My name is Veronica Chapa Gorczynski.
4 And I am President of the East End District. So I
5 have the honor of presenting my testimony this
6 morning to you from the heart of the Second Ward here
7 in Houston.

8 I am a community development professional
9 with over 16 years of experience in community
10 development managing programs for the City of Houston
11 and the State of Texas, HUD entitlement programs and
12 CDBG Disaster Recovery program design.

13 Of note, my district that I represent
14 now, the Business Improvement District, the East End
15 District, did not participate in any FEMA or HUD
16 programs after Hurricane Harvey.

17 So I've limited my testimony today to my
18 personal and community experiences with regards to
19 the federal response. I want to thank my colleague,
20 Francisco. It's always so wonderful to see you. And
21 thank you for giving the level- set on just how
22 beautiful and big this community is. I like to tease
23 people that Harris County is the size of the State of
24 Rhode Island, with or without water.

25 So if you think of that and an event of

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1 this magnitude and the community that I serve, the
2 East End District is 16 square miles with a population
3 of about 75,000. Forty percent of the people are
4 approximately identified as Hispanic in the last
5 census and a third speak a language at home other
6 than English.

7 So, when preparing for this presentation,
8 I'm so grateful for the staff. You all have a
9 wonderful staff on the Commission, and they said why
10 don't you share your personal Harvey story?

11 And admittedly, I was embarrassed to
12 because my experience was not as bad as others. So
13 when I think of Hurricane Harvey, I think of my
14 colleague Dan and his story of getting his wife and
15 his six-month-old son on a kayak to get them out of
16 their home that was flooding on the first floor.

17 I think of my friend Lauren, who shared
18 her harrowing experience and actually published an
19 article of trying to hold a weeks-old baby girl above
20 her head as she waded in chest deep water to cross
21 the street to seek shelter at her neighbor's house
22 that was on higher ground.

23 I also with you remember the images that
24 were broadcasted nationally of the families that were
25 devastated in the region. You know, at the end of

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1 the day, my husband and I had a roof leak in the
2 ceiling of our nursery. We had a five-week-old baby.
3 So my husband emptied the nursery, and I tarped over
4 the carpet and put any bucket, pot, receptacle I could
5 find to capture rainwater for the following week.

6 The repairs took months. Contractors and
7 the process just took a long time, but we got them
8 done. We didn't ask for assistance because we were
9 humbled by the little impact and the fact that our
10 townhome was intact. I was also really grateful that
11 my son was able to sleep through most of the storm.

12 So like many in Houston, our family had
13 planned to hunker down. And this is the acute part
14 of my testimony I want to share because the first
15 goal of any sort of disaster is we just have to make
16 it.

17 So for us, that meant making sure that
18 the gas tanks were full in both vehicles, that we
19 filled up the bathtub. That we had enough groceries
20 for a week. Did we have enough bottles, formula,
21 distilled water? If the power went out, how were we
22 going to cook? Did we have flashlights? Did we have
23 a plan for where we could go?

24 And most importantly, my husband and I
25 had to have a conversation about at what point we

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1 would leave our home. And so after, you know, talking
2 about it, we decided that the risk of flooding in our
3 townhome was relatively low and frankly we could stay
4 if the first floor flooded if we could keep sanitary
5 conditions on the second or third floor.

6 So, again, the key summation of this part
7 of the testimony is especially with low-income
8 families or residents in a neighborhood, there's a
9 lot of expense that happens just to get to the storm.
10 And then we have FEMA and HUD come and take the rest.

11 So with high water in the East End, I got
12 to tour it the Monday after the hurricane. And the
13 water had receded in a lot of areas. We have two
14 bayous. And as the water goes up, it goes down.
15 We're on historically high ground.

16 But as I got closer to the bayous in some
17 of the older Hispanic neighborhoods, you could see
18 that the homes were clearly devastated. There were
19 old blue tarps placed on roofs. And I'm emphasizing
20 old because they probably were there from a previous
21 storm event.

22 There were homes that gave me the most
23 worry had makeshift wheel ramps. They had
24 possessions piled high on the porch. You could see
25 that clearly all sorts of things from blankets to

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1 towels were wet. And the piece that gave me the most
2 pause about it is you know that these were disabled
3 and seniors that were left on their own to find their
4 own solutions.

5 So what we had set up at the City of
6 Houston, the George R. Brown became the central for
7 barbecue. We were going to feed victims, first
8 responders, survivors, everybody alike. It was
9 centralized in that part of the area.

10 We still had food chain disruption in
11 other parts of the city. So specifically with the
12 East End, I went and spoke to a grocery store manager.
13 He had driven two hours to get to the store to open
14 it up. There was debris on the road, and the traffic
15 was bad because we were fighting with first
16 responders to just, as essential workers, to get to
17 work.

18 With tears in his eyes, the man told me
19 that he did not have any fresh food. He did not have
20 any fresh produce, fresh meat. They didn't know when
21 the trucks were coming through. This was five days
22 after the storm.

23 So when we're talking about our
24 communities and especially Houston, one piece that I
25 want to point out is that the Kinder Institute at

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1 Rice University actually did a calculation. They do
2 this amazing annual survey.

3 And the survey was alarming because they
4 calculated based on responses that nearly 4 in 10
5 Houston residents could not afford a \$400 emergency
6 expense. So, think through the description of what
7 you had to hunker down. In addition to low-income
8 families who lost several days of wages, vehicles
9 were helping other family members that were equally
10 devastated. And due to the timing of Harvey, rent
11 was due in a couple of days.

12 So this is just an abstract of my longer
13 testimony. I went beyond the seven minutes. I did
14 provide a framework because I've done this for so
15 many years. And the three things that I would leave
16 you with are reframe the delivery framework, the
17 framework of poverty.

18 The people who need the most long-term
19 support had the least amount of resources, like Dr.
20 Tricia had mentioned. And they need to recover both
21 from an event and from trauma.

22 Second, we need to strive for a housing
23 first model. As Ms. Gomez stated, we have people
24 trying to bounce around and get assistance, whether
25 they're renters, apartments, trailers, all of these

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1 things have costs, and they're not long-term
2 solutions.

3 Third, given the magnitude of more
4 billion-dollar storms happening, we need more
5 partners who work directly with FEMA and HUD. You
6 know, at the end of the day, we all participated or
7 unfortunately were survivors of these disasters. So
8 we should be part not just of the relief but of the
9 recovery.

10 So I'm a South Texas girl from the Rio
11 Grande Valley. It's an honor to be able to be here
12 with such an illustrious panel. I want to thank you
13 for the Commission and say, this isn't a criticism.
14 I still have some optimism that we can work together
15 to change the world and make this better for the
16 future.

17 So thank you for the opportunity to share
18 my story and for working to build a more responsive
19 and resilient community.

20 CHAIR CANTU: Thank you, Ms. Gorczynski.
21 I appreciate the entire panel. It reminds me that
22 there may be listeners in the public whose family
23 members were harmed or who had lost family members
24 because of Hurricane Harvey. And please know that
25 our thoughts and prayers are with those families and

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1 with friends of those families.

2 The Panel will now accept questions from
3 the Commissioners. My colleagues, we have a total of
4 40 minutes. And I trust that you all will raise your
5 hands. I'll recognize you, and you'll use your share
6 of that 40-minute time period. So thanks again to
7 the Panel and who would like to start first?

8 DR. STOUGH: Excuse me, Commissioner
9 Cantu. I also have testimony.

10 CHAIR CANTU: Oh, excuse me. I
11 apologize. I apologize. Please excuse me. I jumped
12 ahead. I called -- I apologize for calling Ms. Gomez,
13 Ms. Gorczynski and Ms. Gorczynski, thank you for
14 catching me. I appreciate you. Please proceed.

15 DR. STOUGH: Thank you, Commissioners,
16 for this opportunity to participate on this Panel.

17 To let you know, I am Professor of
18 Educational Psychology and faculty fellow at the
19 Hazards Risk Reduction Center at Texas A&M
20 University. There, I lead Project REDD, Research and
21 Education on Disability and Disaster, which is one of
22 67 federally funded university centers for excellence
23 in developmental disabilities.

24 Today, I want to offer my perspective as
25 a researcher who focuses on the social, psychological

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1 and policy issues surrounding disasters and
2 disability.

3 In these verbal remarks, I'll highlight
4 three points of interest to the Commission. One,
5 what does research reveal about the experiences of
6 people affected by disaster? Two, why do we see these
7 outcomes? And three, what implications does this
8 research have for improving preparation, recovery and
9 mitigation, particularly in light of events
10 surrounding Hurricane Harvey?

11 So first, what we see in research is that
12 people with disabilities are more likely to lose
13 their homes or have property damage. They're more
14 likely to suffer injuries and health-related
15 complications. And they're more likely to lose their
16 lives in disaster.

17 Post-disaster, people with disabilities
18 are more likely to be overlooked by shelter workers,
19 to encounter more barriers to resources and to
20 receive fewer disaster services.

21 Both adults and children are less likely
22 to receive mental health interventions following
23 disasters. In our own research, we have found
24 recovery from disasters for people with disabilities
25 is more complex, more fraught with barriers, requires

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1 additional case management support and simply lasts
2 longer than does recovery for others.

3 Second, why do disasters differentially
4 impact people with disabilities? Well, what we see
5 prior to disaster is that individuals with
6 disabilities are more likely to live in poverty and
7 to be unemployed. In general, they experience poorer
8 levels of health than does the general population but
9 also face greater barriers to health care.

10 Individuals with disabilities are more
11 likely to live in substandard housing that could
12 place them additionally at risk in disasters. And
13 people with disabilities continue to be marginalized
14 not only in the U.S. but in most of the world's
15 societies. And the stigmatization and segregation of
16 people with disabilities affects not only their day-
17 to-day lives but also the emergency management
18 services and supports that they receive.

19 Note that these factors are in existence
20 before a disaster even occurs. And this research
21 corroborates remarks from Dr. Wachtendorf and also
22 Ms. Chapa. So, we already know based on existing
23 research that people with disabilities are going to
24 be disproportionately impacted even before that first
25 storm raindrop falls.

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1 Third, research and reports following
2 Hurricane Harvey on the experiences of individuals
3 with disabilities together with this existing
4 research that I have just summarized point to a number
5 of implications.

6 One, during Hurricane Harvey,
7 researchers found neighborhoods with higher
8 proportions of residents with disabilities
9 particularly people with cognitive and mobility
10 related disabilities were more likely to experience
11 Harvey-induced flooding.

12 During Hurricane Harvey, several
13 assisted living facilities were also flooded,
14 directly exposing residents with disabilities to
15 rising waters.

16 Now infrastructure decisions are under
17 the responsibility of government, as you know,
18 whether at local or state or federal levels. So,
19 changes in Building Codes and urban planning can
20 provide better protection for people with
21 disabilities against environmental hazards such as
22 Hurricane Harvey.

23 Two, uncertainties surrounding
24 increasingly irregular weather patterns, such as
25 produced the unprecedented rainfall that we saw

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1 during Hurricane Harvey require careful
2 consideration.

3 Additional efforts by emergency
4 management are needed to support people with
5 disabilities given the increasing intensity and
6 unpredictability of these events.

7 For example, a number of states and
8 municipalities have hired disability inclusion
9 specialists to identify barriers for people with
10 disabilities to collaborate with FEMA around these
11 issues and to provide expertise in real-time at state
12 operation centers during disasters. However, Texas'
13 Department of Emergency Management did not allocate
14 such a point person to target disability-related
15 issues during Hurricane Harvey.

16 Three, post-disaster, an important
17 objective is to connect survivors to disaster
18 services and resources. However, a study on recovery
19 assistance following Hurricane Harvey revealed that
20 households with individuals with disabilities
21 actually receive less, not more, from governmental
22 and non-governmental organizations.

23 At our Center on Disability and
24 Development, we know that locating disaster resources
25 for people with disabilities can be particularly

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1 difficult. So immediately following landfall of
2 Hurricane Harvey, we created a Directory of Resources
3 for survivors with disabilities. But we also
4 collected data on the type, availability and number
5 of these resources and how they fluctuated across
6 time.

7 And we found, unfortunately, that
8 disability-related resources in Texas counties began
9 to decrease just three months after Hurricane Harvey.
10 And this is especially concerning given research
11 findings that disaster recovery for people with
12 disabilities typically takes much longer.

13 There are three other research
14 implications that you can find in my written
15 testimony. But in conclusion, when the social
16 vulnerability of one part of the population is
17 addressed, the resilience of a society as a whole is
18 enhanced.

19 So, changes to the design of the housing
20 and urban areas, emergency management practice and
21 disaster-related services could increase the safety
22 of all of us, including people with disabilities.

23 You will find references to the research
24 I just discussed, again, in my written testimony.
25 And thank you.

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1 CHAIR CANTU: Thank you for your
2 testimony, Dr. Stough. And thank you also for your
3 written submission. Now we will accept questions
4 from our Commissioners, our colleagues. Yes,
5 Commissioner Yaki.

6 COMMISSIONER YAKI: Thank you very much.
7 And thank you, panelists, for your statements today.
8 They are very enlightening.

9 There are so many different topics I want
10 to get into, but I'll just go after the low hanging
11 fruit first. And I'm going to start with Ms. Gomez.

12 As someone who is dealing with a lot of
13 the on-the-ground realities of what was going on,
14 what was your experience with regard to the
15 linguistic and cultural appropriateness of the
16 outreach, of the materials of the inspectors who were
17 visiting people's homes, the people who you were
18 representing?

19 MS. PERRIGUE-GOMEZ: Yes. So, I'm going
20 to use examples from Hurricane Harvey and also some
21 of the recent disasters because they are the same.
22 It hasn't changed. And so a lot of what we have seen
23 as well with regard to individuals who are limited
24 English proficient is unfortunate.

25 A lot of the documents are in English or

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1 in Spanish. We've experienced cases where initially
2 eligibility determination letters from FEMA, that
3 first round that go out do typically come in the
4 appropriate language.

5 But when an appeal is submitted,
6 specifically regarding other needs assistance, so
7 that division that's administered by the State of
8 Texas, we have seen unfortunate incidents where the
9 form language of the letter is in Spanish, for
10 example, but the actual denial reason is written in
11 English. That's hugely problematic and really
12 inexcusable for a state where one of the second, you
13 know, most populous language is Spanish.

14 And so there are linguistic barriers. We
15 hear clients complain consistently over and over and
16 over again that they cannot get an inspector who
17 speaks their language during the inspection. They
18 tell us that they feel disregarded. That they feel
19 like inspectors refuse to communicate with them.

20 FEMA does have some FEMA inspection
21 guidelines, which are not published to the public,
22 which, again, is intensely problematic, that it tells
23 inspectors that there is a protocol when dealing with
24 someone who may be limited English proficient.

25 And the first step in that is finding

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1 someone around them who can translate on their
2 behalf. I don't think that's an adequate way to
3 communicate with an individual. Sometimes that
4 person is 16 years old and is trying to relay
5 construction concepts to an inspector who, as we've
6 been told by clients, often feel like they don't care.
7 They're on a time crunch. They need to move to the
8 next inspection. They're seeing the same problems
9 over and over again.

10 So, yes, language barriers are a huge
11 problem. We try to resolve that at TRLA by providing
12 legal information in multiple languages. But the
13 onus is on the government, and they really need to
14 resolve that problem. It's not an excuse.

15 COMMISSIONER YAKI: Madam Chair, I'll
16 reserve my questions after my colleagues.

17 CHAIR CANTU: Thank you. Commissioners,
18 please. Yes, Commissioner Adegbile.

19 COMMISSIONER ADEGBILE: Thanks Madam
20 Chair. Many of your comments, I think there were
21 some themes that emerged in some of the testimony,
22 and many of the comments take as a baseline that there
23 are certain inequities, and inequality,
24 socioeconomic, and others, some having to do with
25 residential, and resources that are available to

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1 people, and then when the hurricane comes over on top
2 of this, it sort of acts as an amplifier, and there
3 are cascading effects from people who begin in a
4 situation when they don't have adequate supports in
5 the first place.

6 I'm wondering, so that people don't
7 mistake the baseline circumstances to be something
8 that we can't address, or that it's something that
9 doesn't require response. If you could help us drill
10 down for a second on what some of the most concerning
11 aspects are of the disparities that you saw along
12 race lines, and we've already heard a bit about
13 disability, but if there's specific additional
14 interventions that you think we should be focused on
15 in that space, that's important, and Commissioner
16 Yaki has already spoken about language access, and
17 the like.

18 I'm just trying to think about the
19 various populations who are having difficulty, and
20 disparities in the impact. Hurricanes are terrible
21 for everybody, but it does seem that part of your
22 testimony suggests that resources seem to get
23 concentrated to those who have the most, rather than
24 those who have the least. And my point is not that
25 those who have had substantial losses, and are of

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1 means, should not have the help of their government
2 when there's a natural disaster.

3 But equity seems to suggest that we need
4 to think about those who really are on the margins,
5 and may not be able to make it through, absent some
6 focused attention.

7 CHAIR CANTU: Was that addressed to all
8 the panel, or one person in specific?

9 COMMISSIONER ADEGBILE: Whoever wants to
10 take a pass at any piece of it. I know it's a bit of
11 a sprawl, so any piece of it you want to take up.

12 COMMISSIONER YAKI: Ms. Wachtendorf has
13 her hand up.

14 CHAIR CANTU: Please.

15 DR. WACHTENDORF: I'll just add a little
16 bit and (audio interference). I think one thing to
17 clarify with that as well, is that it's not only the
18 fact that, so we're looking at compounded impacts.
19 And so when we start thinking about the fact that if
20 we go back to my example, and we've heard it from
21 others about access to the forms, and the filing,
22 which is a huge, onerous, bureaucratic nightmare for
23 everyone who is involved in a post disaster
24 experience, the consequence of that is detrimental
25 across the board.

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1 And it is even more so for those
2 communities that you mentioned. So, the fact that if
3 we're looking at not having access to technology, or
4 bandwidth, that means you can't go on the computer to
5 upload those. You can't reupload, it takes time, you
6 missed the deadlines, and there are financial
7 consequences associated with that. If those
8 documents are written in such a way that make it
9 difficult not only based on language, but based on
10 age for example.

11 If you don't have -- if you're an elderly
12 individual, and you have difficulty navigating those
13 documents, and not having a care giver to go through
14 those with you, that will lead to differential
15 consequences, and a loss of assistance based on age.
16 So, what we're looking for is not, as you mentioned,
17 that it's only attending to one, but the fact that
18 you have these broad base challenges pre disaster,
19 lack of infrastructure attention.

20 And without addressing that in
21 communities that that is disproportionately the case
22 pre-disaster, those impacts are going to be
23 detrimental for them in a disaster situation.

24 CHAIR CANTU: Thank you. Commissioner -
25 -

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1 COMMISSIONER GILCHRIST: Madam Chair?

2 CHAIR CANTU: Yes? Commissioner Yaki.

3 COMMISSIONER GILCHRIST: Commissioner
4 Gilchrist, I think --

5 (Simultaneous speaking.)

6 COMMISSIONER GILCHRIST: -- another
7 witness with a hand up.

8 CHAIR CANTU: Okay, I'm missing that.
9 Just go ahead, and start talking, because I don't see
10 you on my screen, I apologize. I've got a full --

11 MS. CHAPA GORCZYNSKI: Madam Chairwoman,
12 it's Veronica.

13 CHAIR CANTU: Hi, please.

14 MS. CHAPA GORCZYNSKI: Hi. So, thank you
15 for the question. The seven minutes wasn't enough
16 time. So, one of the things I want to say is implied,
17 is in Houston, and a lot of parts of Texas we are a
18 majority minority community, we are a community of
19 color. So, the disparity happens because
20 overwhelmingly the assistance is in neighborhoods
21 that were either segregated by land use, or other
22 reasons, have been under invested for decades, and so
23 you have this compounding effect in the region.

24 So, the area that I represent in East
25 Houston, and East Harris County are some of the oldest

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1 parts of the community, but I've seen this in other
2 areas, such as the Rio Grande Valley. So, part of
3 the reason I really want us to rethink the delivery
4 of services through a poverty framework is because
5 what that means in Texas for so many reasons is that
6 the highest likelihood is that folks that are on SSDI.

7 Who are elderly, who live in the family's
8 original home, who have for a variety of reasons, not
9 been able to keep up to what might be standards that
10 everybody else would say you should be able to
11 maintain. For all those reasons, those are the folks
12 that are devastated again, and again. We had a
13 terrible freeze that had national news in February.
14 So, part of the challenges for example is I do know
15 of homes that potentially haven't had their running
16 water fixed, because whatever was already hurt in one
17 storm was affected by another.

18 So, when we're thinking about how we
19 offer assistance, you have the challenges that the
20 neighborhoods that are probably the oldest, that have
21 the concentration of older apartment units, older
22 single-family homes, homes that haven't been lead
23 abated, that have the highest propensity, or density
24 of people who are disabled, or elderly that stayed in
25 original neighborhoods for example, all those folks

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1 are going to be impacted in a disparate way, and they
2 have the least amount of resources.

3 So, one of the things that most often I
4 hear as a Houstonian is why don't you just leave?
5 You knew it was coming, why didn't they leave, why
6 did they stick around? And the answer is very simply
7 they could not afford to.

8 CHAIR CANTU: Thank you, thank you.
9 Colleagues?

10 COMMISSIONER ADEGBILE: There is one hand
11 Madam Chair, and Commissioner Gilchrist, sorry.

12 COMMISSIONER GILCHRIST: You're fine.

13 COMMISSIONER ADEGBILE: I certainly, I'm
14 going to turn it over to you, I just want to make
15 sure the witnesses get to respond. I will yield after
16 Mr. Sanchez has an opportunity to speak to the
17 question.

18 COMMISSIONER GILCHRIST: Not a problem.

19 MR. SANCHEZ: I'll be super brief. I do
20 want to echo Veronica's context, and how we need to
21 tackle this problem. Particularly you talked about
22 what conditions are there before disaster. The thing
23 seems to be let's get people to a new state, to
24 normal. But we're talking disaster, after disaster,
25 after disaster. So, the state of normal keeps being

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1 lesser than it was before in terms of opportunity.
2 So, we're continuing to put people under -- the
3 framework seems to be let's get them where they were
4 before the storm.

5 Well, before this storm, they were higher
6 up, and higher up, and we just can't keep responding
7 in a very minimalist way. In terms of where we focus
8 these resources, we need to take, and acknowledge
9 that vulnerable communities, those that are
10 impoverished, those that are under served, and we
11 haven't invested need to be a primary focus of how we
12 recover. Because the rest of the community really is
13 dependent on those folks, and those communities
14 recovering at full speed, so the entire community can
15 get back up to speed in very simple ways.

16 We've seen the diminishment of disaster
17 recovery centers, one of the panelists talked about
18 that earlier in terms of having to drive for hours.
19 During Hurricane Ike, we had 36 disaster recovery
20 centers. During Hurricane Harvey, which was -- and
21 that was for Harris County alone, not the region.
22 You talk about Hurricane Harvey, which was second
23 costliest storm, we had 16 disaster recovery centers
24 in this region where people had to drive hours, or
25 wait in line, or were not focused on those communities

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1 that needed most, and so we created local recovery
2 centers, and took it to those neighborhoods, and we
3 have to be cognizant of those things.

4 And it is cumbersome for people to
5 appeal, and on the language issue, as someone that's
6 had to be on the phone with my dad for, like the work
7 force commission, or something like that is
8 translating, you wait for an hour, and a half, by the
9 time you get there, the person on the other line tells
10 you centers can't translate for your father because
11 he didn't sign a piece of paper, even though we're
12 both on the phone.

13 So, these kinds of systems that create
14 hurdles for the most impoverished, and those that
15 need help are problematic, and also in terms of the
16 question about how do we address this between
17 disasters? So many things, when we look at disasters,
18 we can't be using the framework how do we get people
19 back to the previous number before the storm. How do
20 we empower communities to be more resilient, to
21 tackle the chronic stressors from transportation, to
22 healthcare, food benefits, all those kinds of things
23 that already make recovery more challenging?

24 And I'll close with this, it needs to be
25 more coordinated. DNSAP, sort of nutritional

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1 assistance, and food assistance, DSNAP, to get it,
2 you have to wait in line for hours, A through C goes
3 on Monday, D through F goes on Tuesday, and the rest
4 of the week they only get one more shot. And when
5 you go to DSNAP, you can't currently be on SNAP, which
6 is fine, but the vast majority of people that are
7 applying for DSNAP are eligible for SNAP, for
8 whatever reason, they're not doing it.

9 So, why aren't we registering folks for
10 SNAP to make them more resilient? We need to talk to
11 each other better, among local, state, and federal
12 partners, how we see those opportunities to close
13 those gaps, and not let them pass by.

14 CHAIR CANTU: Thank you. Any other
15 panelists wish to address the topic of racial
16 disparities, or other vulnerable groups, other
17 vulnerable populations?

18 MS. FERRIGUE-GOMEZ: Yes, this is
19 Brittany Gomez. I just want to make one really quick
20 comment focusing on a particular legal issue that I
21 think is a massive barrier for low-income families
22 across the state of Texas, not just in our service
23 area, is the home ownership, and heirship property
24 issues. This year FEMA expanded the documentation
25 that it is allowing for individuals to prove

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1 alternative homeownership, in Texas we have very
2 interesting, and very complicated real property laws
3 in place.

4 To be clear, those individuals that FEMA
5 has expanded the documentation they will accept for
6 were always homeowners, they have always been
7 homeowners in the eyes of the law of Texas, but
8 heirship properties are just one example of legal
9 issues, legal real property issues that impact low-
10 income families. Homeownership as a prerequisite,
11 and having to prove that homeownership as a
12 prerequisite to disaster assistance for FEMA, or SVA,
13 so that can be problematic.

14 I think that there needs to be an in-
15 depth analysis, and maybe even a separate committee
16 that focuses on title issues in the state of Texas
17 that are acting as barriers for low-income
18 individuals. In my written testimony, I provided you
19 a story of a client that I represented for several
20 years trying to obtain clear title for him to be able
21 to just qualify for FEMA. It was very complicated,
22 and arduous, and he was a wonderful client, who was
23 a veteran, but he was elderly, and we worked very
24 hard for him, and he ultimately did not get FEMA
25 assistance, or SVA assistance going forward.

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1 So, real property is a barrier impacting
2 people's ability to recover. And at TRLA we do real
3 property title clearing as disaster preparedness.
4 And so maybe there needs to be some sort of incentive
5 to help encourage that within the communities.

6 CHAIR CANTU: Thank you. Commissioner
7 Gilchrist, I'm going to call on you please.

8 COMMISSIONER GILCHRIST: Madam Chair,
9 thank you very much, and let me thank the panelists
10 for their testimony today. My comment is for Mr.
11 Sanchez. You mention in your written testimony that
12 the national flood insurance premiums had to be paid
13 in full each year, is that correct?

14 MR. SANCHEZ: It is, it's one of a couple
15 issues with the national flood insurance program, and
16 I'll leave others to debate. For example, some places
17 that don't flood regularly could be 700 dollars a
18 year, could be 2000 plus dollars a year, I'll leave
19 it for other folks to debate whether those prices are
20 fair, or not, if those folks are in an area that
21 doesn't come up with disaster, but it's challenging.
22 If you're paying that, you have to pay that up front.

23 So, we're already looking at -- Veronica
24 mentioned the 400 dollars that folks, almost 50
25 percent of our community can't come up with for an

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1 emergency expense, that was pre-COVID, imagine where
2 we're at now. So, in terms of flood insurance, aside
3 from the disparities, things that you could tackle
4 right now are why can't you put that on a payment
5 plan for your flood insurance program? Why do you
6 have to pay that up front? Why can't it be built
7 into escrow, and things like that?

8 So, those are some of the challenges that
9 come sort of with those issues, and those are the
10 kinds of low-hanging fruit, who doesn't take a
11 payment plan? Good, bad or indifferent, this nation
12 thrives on credit, and making monthly payments, why
13 can't you do that for something that's required, but
14 also build resilience?

15 COMMISSIONER GILCHRIST: Thank you for
16 that. And just curious to know, are you aware of any
17 legislative moves that might, in any way change that?

18 MR. SANCHEZ: I am not, I know there's an
19 active debate, as there is every time the national
20 flood insurance program has to be renewed, where that
21 cost burden should fall, so I know that's still
22 currently the legislative process. I would imagine
23 now, or the next time that there's a renewal, that's
24 an opportunity to look at that. Every few years you
25 have the whether or not Congress will reinstate the

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1 national flood insurance programs, and these
2 continuing debates as to who should bear the burden
3 of the cost if you're in an area that's prone to
4 flooding. But right now, or the next cycle would
5 seem like ideal times to tackle that issue.

6 COMMISSIONER GILCHRIST: Thank you very
7 much.

8 CHAIR CANTU: I am trying to share two
9 screens here.

10 COMMISSIONER ADEGBILE: Commissioner
11 Kladney has his hand up.

12 CHAIR CANTU: Thank you. Commissioner
13 Kladney?

14 COMMISSIONER ADEGBILE: Dave, we need --
15 (Simultaneous speaking.)

16 COMMISSIONER YAKI: David you're on mute.

17 COMMISSIONER KLADNEY: This question is
18 for Mr. Sanchez, Dr. Stough, anybody else who would
19 like to answer. But I was wondering if you could
20 list five specific areas where you feel FEMA failed
21 to provide Harris County assistance for disabled
22 people prior to, or during Harvey?

23 MR. SANCHEZ: I'll address this,
24 Francisco, just some broad issues, maybe not FEMA
25 specific, but something I see across the spectrum is

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1 there's a challenge in translation in providing real
2 time services in terms of being able to have
3 particularly for example deaf, and hard of hearing.
4 Being able to have translations not only in shelters,
5 but also in the recovery process. Those are often
6 times, you need that ability on site, in the moment,
7 the appeals process is cumbersome, the application
8 process is cumbersome.

9 Having to call back, and be on this
10 repeated cycle of trying to mesh someone's
11 availability to do those translations, or providing
12 ASL, or Spanish language in the moment, just keep
13 sort of extending that process. And I think we also
14 need to take a look at, one of the things that has
15 gotten better I think, is requiring AVA compliance at
16 shelters, and those kinds of facilities. I think
17 there is vast improvement for the accommodations that
18 are done there.

19 I think we're right now at sort of the
20 minimum, I would urge folks that are more expert at
21 that than I am, I think we need the ability to not
22 only -- and also to provide at the local level, I
23 think there's always challenges, and I think there's
24 always opportunities to improve. Now, if we provide
25 emergency public information, recovery information,

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1 and those kind of critical issues in formats that are
2 accessible to the community, not to get ahead of
3 myself, we've actually got an exciting announcement
4 coming up next Tuesday of how we're improving some
5 things here in Harris County.

6 But I will tell you I have the
7 opportunity to sit at the table with some of my
8 colleagues from across the country that are excellent
9 at what they do. One of the continuing challenges, we
10 ask each other what's working well, are you doing
11 this as well as you could be? We look at each other
12 like man, we sure could use some help. So, I will
13 say that we need to bring folks to the table with
14 that expertise into these discussions, into that
15 decision making, and building that capacity to have
16 those folks at the table to help guide us through
17 this.

18 One thing that did work well that I think
19 was organic in Harvey, we have a lot of organizations
20 that came up from vulnerable communities. These
21 disadvantaged communities of colors, disabled
22 communities, and others that came up, and were part
23 of the recovery process that had not been before
24 because of the magnitude of Harvey. We need to
25 welcome them to the table, and we need to empower

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1 them to be a part of the process. Aside from
2 language, the cultural understanding they bring, to
3 be able to translate those services in those
4 communities is essential, and something that would be
5 valuable to the process.

6 COMMISSIONER KLADNEY: Dr. Stough?

7 DR. STOUGH: Yes. Best practice in
8 emergency management is to conduct an after-action
9 report following a disaster. The state of Texas did
10 produce an after-action report called the Eye of the
11 Storm, however nowhere in the 177 pages of that report
12 was any mention of people with disabilities, of
13 elderly people, or of people with functional needs.
14 And I'll just add this, there were 11 mentions of
15 what to do with animals in disaster. So, I do believe
16 there was an oversight of significance there.

17 At that time, following Hurricane Harvey,
18 there was a Disability Task Force on Emergency
19 Management. I served on that advisory committee, we
20 produced our own after-action report based on surveys
21 of the disability community; and also, of our partner
22 disability organizations and service providers that
23 were a part of that task force; and we found
24 shortcomings in four areas- with respect to
25 communication about the impending hazard of Hurricane

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1 Harvey, with respect to sheltering, with respect to
2 evacuation, and then also with respect to state and
3 federal resources.

4 And in my testimony, you have a link to
5 both reports. The after-action report on individuals
6 with disabilities details specific recommendations
7 following under each of these broad areas. So, in
8 sum, these are very broad areas that we saw
9 shortcomings and needs for improvement. As of today,
10 I do not know if the state has followed these
11 recommendations.

12 But what I do know is I know that these
13 are areas we see time and again in disasters that
14 affect people with disabilities- Communications,
15 sheltering, resources, evacuation.

16 COMMISSIONER KLADNEY: Thank you. And I
17 know this will shock my colleagues, but I only have
18 one more question. And that would be at the shelters,
19 I understand there weren't facilities for service
20 animals, power dependent people, wheelchair dependent
21 people, autism, or IDD folks. And I was wondering if
22 FEMA ever provided instruction, or education to
23 Harris County emergency management personnel on
24 caring for persons with disabilities during natural
25 disasters. I guess more specifically instruction on

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1 ADA, the Rehabilitation Act, or civil rights under
2 the Olmstead case. Does anybody know if that's ever
3 happened from FEMA?

4 DR. STOUGH: DR. STOUGH: I believe at
5 the time, FEMA, prior to Hurricane Harvey, had a
6 training called 197, that's the number of the module,
7 but that had not been updated, and not regularly
8 offered to FEMA employees. At the state level, the
9 state of Texas had a Texas form of module 197, and
10 training was offered to emergency managers in the
11 state. However, it is not a required training, it's
12 a supplemental training.

13 COMMISSIONER KLADNEY: So, did that
14 training include civil rights accommodation, and how
15 to accommodate for them? And then subsequent to that,
16 Harvey occurred, and none of that was really
17 followed, is that what I'm hearing?

18 COMMISSIONER ADEGBILE: Just for the
19 record, that's part of Commissioner Kladney's
20 previous last question.

21 DR. STOUGH: There are examples of good
22 provisions for people with disabilities inside of
23 shelters, and there are examples of bad practices.
24 And I would say that those shelters that are run by
25 the American Red Cross are official shelters in the

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1 state of Texas, but you also have a lot of pop-up
2 shelters. And in those kinds of situations, you have
3 volunteers, you have churches, you have people who
4 may not be very educated about disability-related
5 issues. This does not remove them from the
6 responsibility to make things successful, but just an
7 explanation for in part, what occurs there.

8 Now, of course Hurricane Harvey was not
9 an evacuation disaster, right? For the most part
10 people sheltered in-place, because the hurricane
11 originally was going to come in around Corpus
12 Christi, and actually Corpus Christi was really well
13 prepared for evacuation, but then it went back into
14 the Gulf of Mexico, and then came back into Houston.
15 And at that point, evacuating the millions and
16 millions of residents- it was too late to do a full-
17 scale evacuation of that type.

18 COMMISSIONER ADEGBILE: Madam Chair, if
19 other commissioners have questions, I defer. If not,
20 I have a follow up.

21 CHAIR CANTU: Would any of my colleagues
22 have a question? Should I yield to Commissioner
23 Adegbile?

24 COMMISSIONER ADEGBILE: It looks like
25 Commissioner Yaki has a question. I yield to

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1 Commissioner Yaki.

2 COMMISSIONER YAKI: Thank you. This goes
3 to stuff that a lot of people have touched on, and we
4 just heard of how the disaster magnifies pre-existing
5 disparities that may exist within a community. I'm
6 wondering in particular, in the recovery effort FEMA
7 has the ability to allocate what is called hazard
8 mitigation grants, and I would like to know whether
9 they're going in the areas for these affected
10 communities, where these increasing disparities
11 exist, number one.

12 Number two, I want to know whether, or not any
13 of you have seen a pattern where these local buyouts,
14 and acquisition programs is being used as
15 proportionately as being reported in certain other
16 areas to buy out, and essentially relocate
17 predominantly minority, particularly African
18 American populations in Harris County.

19 MR. SANCHEZ: This is Francisco, I'll
20 just say a little bit about the hazard mitigation
21 grants that come sort of from the federal government,
22 and FEMA in particular. So, a percentage of the
23 disaster cost is sort of bundled into mitigation
24 grants that are provided from FEMA across the state.
25 However, sort of if for example Harvey was a Texas

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1 disaster, that money from the mitigation action
2 grants goes to the state, and then sort of anybody
3 across the state, any jurisdiction can apply for
4 those.

5 But it's not necessarily isolated to that
6 particular community. And then it becomes sort of a
7 competitive process to go, and apply for those.

8 COMMISSIONER YAKI: But is that
9 competitive process itself tilted against helping out
10 lower income communities, which is one of the
11 implications that's been made?

12 MR. SANCHEZ: Not sure of that, because
13 --

14 COMMISSIONER YAKI: Because the matching
15 contribution requirement, et cetera that communities
16 need to come up with if you're a poor community, and
17 you can't come up with the ten, or 20 percent that
18 you need to do, it goes to somebody else who can.

19 MR. SANCHEZ: Correct, and a large of
20 part of that, there's at least two players in that,
21 how that money comes down, how they choose to
22 prioritize who will get the limited pot of money,
23 what priorities they will do in terms of setting that.
24 At the local level, there needs to be that investment
25 in coming up with that match. Which, for some

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1 jurisdictions that are larger, and have more
2 resources isn't quite an issue.

3 But you've got folks in communities that
4 may not have the funds to do that. And then you also
5 have to prioritize at the local level, did we want to
6 tackle that? For example, we were able to use
7 mitigation grant dollars, I can't remember if it was
8 Harvey, or not, but to do a piece on mitigation, and
9 how people can make their homes more resilient, and
10 we made sure that it was available, we will release
11 soon, it's not available only in English, but also in
12 Spanish, and also as ASL.

13 So, you have those various dynamics going
14 on. Can you afford to match? Do you have the
15 resources locally to get to compete for those, and
16 also are you prioritizing at the local level to make
17 sure to tackle those issues of inequities?

18 COMMISSIONER YAKI: Well, let me just do
19 a quick follow up on that, because going to a point
20 that I think Ms. Gomez, and others have made about
21 the fact that FEMA does a lot with homes, but not as
22 much with renters. To what extent can these grant
23 funds be used to rehabilitate and stabilize rental
24 housing rather than just ownership housing so that
25 people aren't having to be relocated, or move, or

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1 whatever has happened to a lot of different
2 communities, rental communities especially post
3 disaster.

4 MR. SANCHEZ: So, a couple of
5 observations on that, one is you've got these various
6 players at the federal level from how to deal with
7 housing, to FEMA dollars, and some other agencies. I
8 will tell you on the rental side you do have a
9 disparity in that FEMA provides individual existence,
10 direct money that don't have to be repaid to
11 homeowners, and then an option for renters is SBA,
12 which provides low interest loans. And so, you're
13 putting renters in a capacity where they have to get
14 a loan, or owners of a property receive money that
15 doesn't have to be paid back.

16 So, I think exploring those kinds of
17 issues, and what inequities lie there is certainly of
18 some value. And I will tell you in terms of the
19 monies that are available, one of the things that's
20 challenging is that every round of dollars tends to
21 come with different sets of requirements, and
22 standards. And so, our hope is that those evolve for
23 the better, but every route of mitigation dollars
24 from any number of federal agencies has to be
25 vantaged, and of course what the latest rules are,

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1 and sometimes they're better, sometimes they're not.

2 But I think baking in the kind of
3 framework that prioritizes diversity, equity,
4 inclusion, and recognizing that we need to move these
5 vulnerable communities as the focus for recovery, and
6 not bringing them back to normal, but bringing them
7 to a state of resilience that really ought to be the
8 priority.

9 COMMISSIONER YAKI: Thank you. Veronica?

10 MS. CHAPA GORCZYNSKI: Thank you. As an
11 observer, and a former program officer, we've been
12 working on the apartment complex, and the multifamily
13 question for, in my experience, over a decade, and we
14 haven't gotten it right, and that's going to need
15 more research specifically. Because renters are
16 placed at a disadvantage, and we don't accommodate
17 for what happens when whole apartment complexes are
18 unlivable. We struggle with that, and it's everything
19 from let's get them temporary assistance to what's
20 the baseline of sanitary, and safe, how long can we
21 let them stay in there?

22 And the result is we still have stories,
23 I think I saw one in the news last week that was
24 talking about mold in apartment complexes, and
25 whether or not their project placed voucher could be

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1 moved, and portable, and I know Brittany will know
2 more about that piece. So, I would urge more
3 research, and partnership on how we do this
4 differently, because the number is increasing.

5 When I worked on the initial plan from
6 the state of Texas, and I was on a team, the HUD, the
7 request was 3 billion dollars for the state of Texas,
8 and Harvey, I don't remember what the total was, I
9 think it was seven. I know for Harris County it was
10 1 billion, and the city of Houston is 1 billion
11 dollars. From that, I can't tell you how much went
12 to hazard mitigation, or how much is going into
13 apartment complexes, because there's a difference,
14 can we rehab what's there, do we build something new
15 in a new place?

16 And when you build something new, it's an
17 additional three years to kind of get that in the
18 unit from a war in getting the ground done. So, this
19 is -- I think you hit on a key issue, it's very
20 complex, and I definitely want to encourage more
21 research on this. I'll defer to Brittany, you've been
22 so patient, but I know you've been on the ground
23 working on this issue for years too.

24 COMMISSIONER YAKI: Yeah, I want to hear
25 from Brittany too. One of the things that I

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1 encountered when we were dealing with the Loma Prieta
2 earthquake was that FEMA still had a vision of America
3 as 1950s single family homes with white picket
4 fences, and it's making me think like they still
5 haven't quite deviated from that model yet. So,
6 Brittany, if you could just answer, you had your hand
7 up, and then I'll defer back to Commissioner
8 Adegbile.

9 MS. PERRIGUE-GOMEZ: Yes, of course. So,
10 I believe the allocation of funding was around 5
11 billion dollars for areas, and I think that excludes
12 potentially Harris County, their allocation was
13 slightly different. But you're right. Ideally, I
14 would love to see mitigation funding, at least from
15 Hurricane Funding, be reallocated toward a direct
16 renter program since they were excluded completely
17 from the initial allocation of CDBGDR funding
18 programs that renters would benefit from, that
19 homeowners currently get under the Homeowners
20 Assistance Program is additional rental assistance.

21 Utility assistance, transportation
22 assistance, appliance reimbursement, and security
23 deposit assistance for when they are temporarily
24 displaced. All of those things are things renters
25 also need, and can benefit from. The funding for

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1 CDBGDR was allocated for the affordable rental
2 program, which I touched on briefly in my opening
3 statement, and not for its direct housing assistance.
4 mitigation funding could be used to address that
5 issue, but the affordable rental program's maximum
6 rent policy allows renters to charge up to 30 percent
7 of 65 percent of the area median income, and that's
8 according to GLO's own house, and guidelines, which
9 HUD had approved for this disaster.

10 Generally, HUD public housing
11 requirements limit the maximum rent of a low-income
12 individual to 30 percent of their income. Ultimately
13 in the broad scope, what this means is extremely low-
14 income, and very low-income individuals will be
15 excluded from the affordable rental program, because
16 they won't be able to afford to rent those places.
17 Additionally, one example that just comes off to me
18 off the top of my head, and this may have changed
19 more recently.

20 But If I can remember correctly, only one
21 apartment complex is being built in Corpus Christie
22 Texas, it is 25 units, and like I mentioned, extremely
23 low-income, and very low-income individuals won't
24 qualify for that. And one way you could very easily
25 make this requirement accessible to renters who were

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1 impacted by Hurricane Harvey is by putting a
2 requirement that some of those units be capped at 30
3 percent of their income, as well as giving preference
4 to Hurricane Harvey survivors, since the money was
5 intended to repair damage from Hurricane Harvey.

6 CHAIR CANTU: Thank you. Commissioner
7 Adegbile, is this a question that can go to the next
8 panel? Oh, Commissioner Gilchrist hasn't -- is this
9 something that can wait until the next panel, or do
10 you need to do it now?

11 COMMISSIONER ADEGBILE: They're actually
12 some of them on some of what we've heard.

13 CHAIR CANTU: Okay, follow up questions,
14 do I have consent from the commissioners to keep the
15 panel a little longer? Hearing no objection, you've
16 only got five more minutes folks, because we do have
17 a hard close on this.

18 COMMISSIONER ADEGBILE: So, I just wanted
19 to understand two things about the testimony we've
20 heard. We've heard a little bit about a CDBG
21 exclusion for renters, and I want to know if anybody
22 has an understanding about what the rationale would
23 be for that in light of the inequities that seem to
24 flow from it, and then with respect to the after-
25 action reports that were described, I'm trying to

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1 understand if any of those reports speak to the
2 demographic inequities that you all have been
3 identifying.

4 Is there ever a recognition, and a coming
5 to terms with those experiences, some of which you've
6 been talking about today. If not, why not?

7 CHAIR CANTU: Do I hear a panelist
8 wanting to respond?

9 MS. PERRIGUE-GOMEZ: So I think -- sorry,
10 this is Brittany Gomez again. I think one issue
11 regarding why renters have been excluded may actually
12 come down to the numbers. If you look at some of the
13 data that GLO used, and cited in its state action
14 plan, which was subsequently approved by HUD, there
15 might be an indication that the homeowner's unmet
16 need is substantially larger than that of a renter's
17 unmet need after Hurricane Harvey.

18 There's a question as to where, or how
19 that number was calculated, and the GLO state action
20 plan, it does indicate that they may not have excluded
21 insurance when calculating the total number of needs
22 in the suggested care. So, currently the state action
23 plan indicates that 6.9 billion dollars of unmet
24 housing need for homeowners, but if you would exclude
25 insurance from that, that actually would result in an

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1 unmet need of 2 billion dollars.

2 Whereas if you did the same thing for
3 renters, which was allocated for 2.7 billion dollars,
4 excluding insurance from that, it's 2.6. That's a
5 large discrepancy. And so I think it comes down to
6 data. I think there's also a conciliation agreement
7 in which HUD, and the state of Texas came to after
8 Ike, and Dolly regarding the same thing, the
9 conciliation agreement ultimately determined that
10 direct financial assistance for renters was
11 necessary.

12 COMMISSIONER ADEGBILE: Dr. Stough on the
13 after-action fees?

14 DR. STOUGH: Yes, and I have to say, I'm
15 continually befuddled. I mean, I look at these after-
16 action reports, I look for recommendations for people
17 with disabilities, or functional and access needs,
18 and I'm continually surprised, frankly. What I can
19 say is that populations with disabilities have come
20 late to discussions about civil rights behind people
21 of color, or people who don't speak English as a first
22 language.

23 And this is another instance in which
24 paying attention to the experiences of the people
25 with disabilities is overlooked again. So, I don't

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1 have a good answer, all I can do is more research.

2 COMMISSIONER ADEGBILE: Do those reports
3 speak about racial inequities?

4 DR. STOUGH: The one that I'm
5 referencing, the "Eye of the Storm," I'd have to go
6 back, and look at that. Nothing about seniors,
7 nothing about people with mobility impairments, or
8 hearing impairments, I'd have to back through that.
9 You have a link to it in my report.

10 COMMISSIONER ADEGBILE: Thank you.

11 CHAIR CANTU: Commissioner Gilchrist.

12 COMMISSIONER GILCHRIST: Thank you Madam
13 Chair. This comment is for Ms. Veronica. I was most
14 intrigued by reading your testimony that you wanted
15 to see more collaboration with additional groups to
16 participate with FEMA. Why do you feel like that's
17 not happened to any large degree?

18 MS. CHAPA GORCZYNSKI: I think Francisco
19 touched on it a little bit in that they weren't a
20 part of the process previously, because the
21 government came in, and handled it. What I saw
22 differently in this storm was, in the community we
23 serve, the Hispanic Spanish speaking churches became
24 shelters. That's where people had confidence to go,
25 and ask for help, whatever the help was. We also saw

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1 a lot more on social media.

2 And so, what I was trying to say is that
3 these storms are getting bigger. The process, and
4 the bureaucracy of government, by just the premise
5 that we're here, it's not working in delivering. And
6 so asking for groups that understand the
7 neighborhood, that have cultural competency, that
8 have local knowledge that can understand how we
9 approach people for assistance. There are
10 neighborhoods, and everyone here knows a neighborhood
11 I would argue, that you could not knock on the door,
12 and say I'm here from the government, and I'm here to
13 help.

14 COMMISSIONER GILCHRIST: Thank you for
15 that. Just give me an example of what type of groups
16 you are referring to.

17 MS. CHAPA GORCZYNSKI: So, there's always
18 challenges for the faith-based community, a lot of
19 smaller churches really stepped it up, and they asked
20 for donations, they didn't ask for reimbursement. On
21 the next panel you have a wonderful woman named Kathy
22 Flanagan-Payton, and she's going to give you her
23 story, and what she's done, and she has done things
24 outside of the box.

25 She's a community resource organization

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1 that maybe light help in the long-term recovery, but
2 started doing more to help preposition resources as
3 the storm was coming in. We have a large number of
4 community development corporations that maybe haven't
5 helped on the front-end piece. I saw interesting
6 innovations among school districts, and I don't know
7 how school districts, because I've not had that
8 benefit, interact with FEMA, or HUD.

9 But where they, in areas where shelters
10 couldn't be setup, were setting up spaces beyond the
11 Red Cross requirements. They were having people come
12 volunteer, and they were asking for donations. So,
13 the smaller organizations that are embedded in the
14 community. And here are some key things to consider,
15 they are not going to loan you money, and ask you to
16 be reimbursed, they just don't have it.

17 But they know the people in the
18 neighborhood, they're asking for the donations, and
19 they're coalescing their resources, and you can do
20 that across pocket neighborhoods all across Houston,
21 and I would probably argue other cities all over the
22 country too. So, I don't have a perfect definition
23 for you commissioner, but I think where people
24 haven't been there before, they need to be invited to
25 participate, and they need to give you their

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1 recommendations, and solutions of how they can help
2 you.

3 And then government will tell us from a
4 bureaucracy perspective, we're not going to duplicate
5 benefits, or allow for them to participate.

6 COMMISSIONER GILCHRIST: Thank you very
7 much for that. And I guess one of the consistent
8 themes I've heard throughout your testimonies today
9 is accessibility. Making sure that whatever we have
10 in place is accessible to the people we're trying to
11 serve. So, that's kind of what I was getting at,
12 thank you so much for those comments, I appreciate
13 that.

14 MS. CHAPA GORCZYNSKI: Sure, and sir if
15 I may, part of the reason I really hammer on it is I
16 have seen for years, people in my community do not
17 ask for help, or assistance. They're going to figure
18 it out themselves, they're going to figure it out
19 with their family, and they're just going to get it
20 done because that's all we're able to do in their
21 eyes. So, I know we can do better, it's because I've
22 knocked on the door, or I've had friends that knocked
23 on the door, and they know that we're from the
24 neighborhood, or that I'm affiliated with the parish,
25 we get other results.

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1 And we're able to help in a different
2 way. And the problem is now getting too big beyond us
3 to just have the one discussion on what do we do with
4 FEMA? It's going to have to be these community-
5 oriented solutions, and they're going to be
6 difficult, they're not going to be easy. But in my
7 personal experience when we have to find out how we're
8 going to help Ms. Smith down the street, those are
9 the folks to help me get it done.

10 COMMISSIONER GILCHRIST: Thank you very
11 much, appreciate it.

12 CHAIR CANTU: Thank you Commissioner
13 Gilchrist. Well, I can see why this panel had a
14 difficult time getting off the stage, because you
15 were so well prepared, and you were so informative,
16 so I really appreciate you very much. We're going to
17 take a 10-minute break, and come back at 48 minutes
18 after the hour. So, I'll see you in ten minutes, and
19 thank you very much for the panel, you did terrific.

20 **IV. BREAK**

21 (Whereupon the above-entitled matter
22 went off the record at 1:38 p.m. and resumed at 1:48
23 p.m.)

24 **V. PANEL TWO**

25 CHAIR CANTU: Welcome back. I will now

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1 briefly introduce the order of the panelists in the
2 order they're going to speak for our second panel.
3 Our first speaker is Chauncia Willis, co-founder and
4 chief executive officer of the Institute for
5 Diversity and Inclusion in Emergency Management. Our
6 second speaker will be Kathy Flanagan-Payton,
7 president, and CEO of Fifth Ward Community
8 Redevelopment Corporation.

9 Our third speaker is Julia Orduna,
10 southeast Texas regional director, Texas Housers. Our
11 fourth speaker is Dr. Shao-Chee Sim, vice president
12 for applied research, Episcopal Health Foundation.
13 And our fifth speaker, our final speaker for panel
14 two is Ben Hirsch, director of strategic
15 partnerships, West Street Recovery. And we'll start
16 with you Ms. Willis, please proceed.

17 MS. WILLIS: Okay, well thank you, thank
18 you Madam Chair, and distinguished members of the
19 commission. My name is Chauncia Willis, and I serve
20 as the chief executive officer for the Institute for
21 Diversity and Inclusion in Emergency Management, I-
22 DIEM, and I'm ever so grateful for the opportunity to
23 share information with you today regarding the
24 federal government's response to Hurricane Harvey, as
25 well as to highlight my organization's innovative

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1 work in prioritizing equity as a solution to reduce
2 the impact of disasters on marginalized communities
3 across the United States, and globally.

4 Systemic policies, programs, and
5 practices create, and contribute to disproportionate
6 disaster impact among low-income communities, and
7 people of color. Vulnerable, under served, and, or
8 marginalized communities are forced into high risk,
9 high exposure living situations contributing for an
10 increased risk for loss of life, and property which
11 increases vulnerability, and decreases resilience.
12 In 1967, Dr. Martin Luther King delivered a speech he
13 described the other America.

14 One America that serves, and supports the
15 lives, and livelihoods of white Americans, and
16 another America that is punitive, hostile, and
17 apathetic to people of color, the poor, and otherwise
18 under-represented groups. Now, at a granular level,
19 and much like the two Americas that Dr. King
20 described, there are two emergency management systems
21 operating in this country, and those two systems have
22 tremendous impact on marginalized people before,
23 during, and after disasters.

24 As discussed earlier today, the emergency
25 management system as we know it, one that aims to

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1 reduce the harmful effects of hazards, and disasters
2 does not work the same way for everyone. Some benefit
3 from it, and some are further harmed by it. Those
4 that are affluent, that are middle class white
5 homeowners et cetera have the expectation of justice,
6 and full recovery in the unfortunate event of an
7 unforeseen disaster.

8 The emergency management system has the
9 policies, and programs that were put in place to
10 assure them a full, and timely recovery post
11 disaster. Those neighborhoods are restored faster,
12 and if there is significant damage, they are provided
13 with more funding to move to a safer, less hazard
14 prone location. Conversely, the other America must
15 endure the impact of the other emergency management
16 system.

17 A system that does not provide full, or
18 timely recovery, a system that is more likely to deny
19 requests for assistance. A system that delays, and
20 prevents recovery in a methodical fashion. This
21 other system does not recognize that biased policies
22 such as redlining, and segregation increase a
23 community's exposure to hazards, and in fact sees the
24 members of that community as acceptable losses. This
25 other emergency management system operates within the

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1 construct that those that live in higher value
2 neighborhoods, that are educated, and that have more
3 access to resources are thus more valuable, and
4 deserving of full recovery, and a greater share of
5 funding resources to mitigate against future
6 disasters.

7 The overarching goal of disaster policies
8 both then, and today has been to restore economic
9 stability, and wealth to land, and homeowners. The
10 federal response to Hurricane Harvey is a repeat of
11 many other disasters that have occurred throughout
12 history. The government has never prioritized the
13 most vulnerable within our society in times of
14 disaster. The working poor, immigrants, Indigenous
15 groups, people with disabilities, and the list goes
16 on.

17 In fact, history tells us that these
18 groups are sacrificed first, and their collective
19 needs for restoration post disaster are considered
20 last. Based on a post disaster survey, 45 percent of
21 affected residents during Hurricane Harvey said that
22 they were not getting help, and that number rose to
23 64 percent amongst Black residents. More alarming,
24 approximately 40 percent of those applications were
25 denied without reason, while others were denied

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1 because their homes were located in flood zones, and
2 thus they were required to carry flood insurance.

3 Of course, this is a luxury for lower
4 income residents. Disasters should not be seen as
5 singular events, they are an ongoing phenomenon used
6 to authorize, and impose further suffering on
7 vulnerable groups. It is post disaster that we see
8 redistricting lines shift, and voter suppression. It
9 was after Katrina that we saw disaster
10 gentrification, where an entire city was absolutely
11 shifted in terms of demographics to become majority
12 White.

13 FEMA denied recovery funding to thousands
14 of African American people post disaster when they
15 denied heirs property rights, which forced them to
16 leave the city they love. As you see, disasters have
17 immediate impact on under-served communities, and
18 long-term impacts. When an entire group of people
19 are intentionally allowed to suffer physical,
20 emotional, and economic harm, one might call it a
21 crime against humanity.

22 In emergency management, we call it
23 disaster recovery. There are many federal, and state
24 organizations that are now touting equity as their
25 focus because of the Biden Administration's equity

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1 mandate, but their actions are performative. They
2 are doing what they need to do to check the box by
3 hiring untrained equity consultants, and failing to
4 make the bold, sweeping changes that will actually
5 impact people, and how they are treated in disaster.

6 In fact, there has been no move to
7 intentionally hire, or contract nonwhite led disaster
8 management firms to lead major, or minor disaster
9 response, and recovery efforts. This is significant,
10 because disaster recovery firms come into a community
11 to provide the initial damage assessments, to provide
12 inspections, and to supplement state resources. FEMA
13 has no requirement for cultural competency training
14 for contractors, its inspectors, or for anyone of
15 their work force.

16 And so they continue to contact firms
17 that have not been trained with a focus on diversity,
18 equity, and inclusion. This will lead to a repeat of
19 disproportionate impact. Our organization believes
20 that disaster equity must be implemented as the
21 primary focal point for federal response, and
22 recovery. I-DIEM deploys disaster equity response
23 teams post disaster to assess equity, and federal
24 response in recovery.

25 In closing, while natural disasters do

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1 not discriminate, their long-term impact
2 disproportionately falls on marginalized groups. The
3 marginalized homeowners must wait the longest, often
4 years to receive assistance, and complete their
5 recovery. That delay, and that lack of
6 predictability harms survivors, and causes
7 irreversible damage to children, to families, and
8 seniors who suffer unnecessarily because of this
9 lengthy process.

10 Equity should be a commitment, and
11 embedded into all of our policies, and programs. We
12 must prioritize the people, and focus on humanity
13 with approaches that ensure equity in transaction.
14 And currently we are doing the most for the most.
15 Thank you for your time.

16 CHAIR CANTU: I apologize, you ended four
17 seconds early, thank you very much. Thank you Ms.
18 Willis. So, I'll call on Ms. Flanagan-Payton next.

19 MS. FLANAGAN-PAYTON: Good morning, and
20 thank you Commissioner Cantu, and I appreciate the
21 conversation, and the dialogue that has taken place
22 thus far. I am Kathy Flanagan-Payton, and I have the
23 awesome honor to be a native resident of the community
24 that I serve known as Houston's fifth ward. I
25 represent an organization, the Fifth Ward Community

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1 Development Corporation, a nonprofit organization, a
2 Neighbor Works charter affiliate.

3 And unofficially what I'm going to
4 reference as a CEMA, a community emergency management
5 agency, because we often respond to the needs of our
6 community. We are a catalytic organization committed
7 to building, and preserving an inclusive Fifth Ward
8 community by developing places, and opportunities for
9 people to live, work, and play. And as a steward of
10 Houston's historic Fifth Ward, and comprehensive
11 community developer, Fifth Ward seeks to enhance the
12 quality of life for individuals, and families.

13 Eliminate blight, attract investment,
14 and resources, encourage commercial, and business
15 development, coordinate government, and public
16 service, and offer a sense of destination, and
17 creative place making. The finished product is a
18 healthy, and vibrant community for residents, and
19 visitors alike. Much has been said about under-
20 served communities, and I want to emphasize that this
21 conversation is long overdue.

22 And while we only reference Hurricane
23 Harvey, I can attest that the residents, and families
24 in Fifth Ward are even going back to recovery as far
25 back as Hurricane Ike in 2008. Yes, today, four plus

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1 years post Hurricane Harvey, and now followed by
2 numerous other natural disasters to include Hurricane
3 Imelda, the ongoing COVID pandemic, and the recent
4 winter storm Uri, Fifth Ward Community Redevelopment
5 Corporation put on its CEMA hat to encourage recovery
6 efforts.

7 And to continue to help Fifth Ward
8 residents recover from the travesty of even Hurricane
9 Harvey storms, the flooding, and we've met basic
10 needs, provided emergency financial assistance, we've
11 restored homes, provided temporary relocation,
12 offered housing case management, and construction
13 management services for our clients. In addition to
14 our targeted service area of the greater fifth ward,
15 we've had to extend our recovery efforts to bordering
16 communities.

17 To include Kashmere Gardens, Trinity
18 Gardens, the Homestead area, and limited parts of
19 Sedagas, Pleasantville, and the East End. The
20 demographic makeup of each of these areas are largely
21 African American, and Hispanics, and low to moderate
22 income families, many living below poverty. Our
23 recovery efforts are an extension of our work that we
24 were chartered to do 32 plus years ago serving
25 vulnerable communities.

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1 We never thought our emphasis would be on
2 disaster recovery. Our work commenced immediately
3 following the storm as we began to receive, and
4 distribute donated supplies, and materials. This is
5 critically important, as government funds, and access
6 to such in communities like fifth ward is almost
7 insulting. It's a day late, and a dollar short. It
8 appears that the system is designed to further beset,
9 and defeat those who need the resources, and help the
10 most.

11 The system, and process are cumbersome,
12 restrictive, inadequate in most cases, and
13 inequitable. Responses from beneficiaries suggest
14 that those with less get less, and those with more,
15 get more. The reality is that those with less
16 actually need more. We don't know what it will take
17 for our government to understand, and appreciate
18 that. In areas like Houston's Fifth Ward, the process
19 of applying for assistance was cumbersome, and the
20 return was disappointing at best.

21 Citizens were frustrated by a process
22 largely centered around technology, and access
23 without regard to the limited access of those living
24 in poverty, and those lacking tech savvy,
25 particularly seniors, and those who are disabled.

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1 You see less than 40 percent of the residents in Fifth
2 Ward really have access to technology, and the
3 internet. To reduce the burden, and deficits
4 presented by this inequitable process, we availed
5 Technology Kiosk, and counselors who are dedicated to
6 assisting individuals, and families in applying only
7 to be disappointed by the lack of support, and the
8 ineligibility letters that they often, and frequently
9 got.

10 Fifth Ward's efforts quickly expanded in
11 response to the need to assist families with clean
12 out, muck, and gut, and emergency needs. For the
13 first two weeks we deployed volunteers with required
14 materials, and supplies daily to assist families, and
15 eventually transitioned to Friday, and Saturday
16 deployment of approximately 130 volunteers daily
17 during the immediate recovery efforts. Timing is
18 optimal to minimize destruction, and loss.

19 And neither the state, nor FEMA are
20 optimal in circumstances where time is of essence.
21 The circumstances after Hurricane Harvey, and Houston
22 were no different. No government organizations stand
23 ready to serve with increasing capacity, and our
24 understanding of needs within the community.
25 Government, and FEMA response efficiencies while

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1 improving, are far from optimal, and the disparities
2 among the most vulnerable continue to grow.

3 Recovery is often impeded by due process.
4 To date, we've assisted more than 500 families in
5 complete recovery, and rebuild of their homes, and
6 1500 families with a disbursement of 7 million
7 dollars for families impacted by Harvey all from
8 project resources, and philanthropy. With complete
9 clean out, muck, and gut, furniture moving,
10 additional supplies to remediate mold and other
11 toxins caused by the water damage repairs, and
12 emergency financial unmet needs.

13 This work is in addition to the countless
14 families who were served as a part of our distribution
15 of dry goods, personal items, none perishables, and
16 go boxes equipped with mucking tools, contractors,
17 trash bags, masks, gloves, and cleaning supplies for
18 those that assist, but supplies were limited, and
19 resources were unavailable. However, the resources
20 again to support these families are from private
21 philanthropists.

22 As an organization working in the
23 community, many have adjusted to a new norm as
24 recovery is relative, and we continue with intake,
25 and vetting for additional victims. And our total

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1 portfolio today, four years later is still in excess
2 of 400 clients who still have varied, and ongoing
3 needs for recovery services. We have, and continue
4 to care for residents, to assess need, clean muck,
5 and gut flooded homes, coordinated receipt, and
6 distribution of cleaning, and personal supplies, and
7 provide support to families of the service providers
8 in need of basic assistance.

9 Why do we do this? Because people do not
10 trust the government. It's discouraging that so many
11 still have not received assistance. Today, our
12 efforts are more focused on comprehensive repair, and
13 rebuilding services, emergency financial assistance,
14 and we continue to be a hub for area community groups,
15 faith-based groups, and elected officials to
16 coordinate, warehouse, and distribute donated
17 supplies. Priority is continued to be given to those
18 families who were declined by FEMA without insurance,
19 and experiencing other vulnerabilities.

20 During the peak of recovery, Fifth Ward
21 CRC actually had to hire 6, and a half full time staff
22 to meet the ongoing demands of recovery, counseling,
23 administrative, and operation managers, to design
24 projects, and case management systems, and added
25 additional skilled contractors who were engaged for

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1 home assessments, and inspections. Who covered the
2 cost of that, who carries the burden? The nonprofit
3 organization.

4 Why? Because we have the organizational
5 experience, and capacity to do owner occupied home
6 rehabilitation, and have managed community
7 development block grant, and social service block
8 grant funds for owner occupied home rehabilitation,
9 and recovery programs in the past. Additionally, we
10 continue to offer, and have storage containers, and
11 off-site warehouses for additional supplies ready to
12 respond each year during Hurricane season, and the
13 ongoing needs.

14 Because it seems that our government
15 doesn't believe that we'll be hit by disaster again.
16 Recognizing the financial strains, and
17 vulnerabilities, Fifth Ward CRC made emergency
18 financial assistance up to 1500 dollars available to
19 clients to mitigate income loss from disaster,
20 minimize foreclosures resulting from increased living
21 expenses, and homelessness, and assist with the
22 utilities, or unmet expenses.

23 These resources have supported both
24 recovery from weather related disasters, and now the
25 pandemic. Lastly, Fifth Ward CRC has developed plans

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1 of hosting a long-term recovery resource center
2 staffed with housing counselors, case workers,
3 volunteer legal services, and computer kiosks for
4 residents use in long term recovery efforts, and
5 plans. Filing claims, printing, and scanning
6 documents, and staying electronically connected
7 during their transitions.

8 Our services are not exclusive to a
9 particular ethnicity, or economic class, and we're
10 able to assist families up to 400 percent of the
11 federal poverty line, but we have established
12 criteria that prioritize assistance based on need.
13 The demands from impacted families --

14 CHAIR CANTU: Ms. Payton, I'm going to
15 interrupt. And I know you're doing so much; it takes
16 you so long to describe it.

17 MS. FLANAGAN-PAYTON: Thank you.

18 CHAIR CANTU: So, I'm grateful, grateful,
19 grateful for you. I do apologize for interrupting.

20 MS. FLANAGAN-PAYTON: No problem.

21 CHAIR CANTU: And I also apologize to Mr.
22 Aguilar, you're our panelists, so I'll call on you
23 last, I'll save the best for last. After Ms. Payton
24 I'm going to call on Ms. Orduna.

25 MS. ORDUNA: Good afternoon

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1 commissioners. I'd like to donate this time to
2 Delores Torres, and Urleen Flowers, two Harvey
3 Forgotten Survivors Caucus members who passed away
4 while waiting for their home to be repaired by
5 government funded programs. My name is Julia Orduna,
6 and I attend today as southeast regional director for
7 Texas Housers, whose staff has worked to understand
8 government policies, and practices involved with
9 disaster recovery, and relief.

10 And the disaster recovery experience of
11 low-income survivors focusing on racial equity, and
12 civil rights issues since Hurricane Rita in 2008.
13 FEMA's disaster programs during Hurricane Harvey
14 created discriminatory effects for low-income, and
15 marginalized communities which raised several civil
16 rights concerns. Their damaged documentation
17 processes generate inaccurate data, which results in
18 unfair distribution of FEMA funds, and ultimately
19 compound the effects of uncoordinated program
20 administration.

21 That further produces disparate racial
22 impact in the subsequent allocation of much greater
23 amounts of CDBG funding for long term recovery.
24 Programs must be administered with empathy,
25 understanding, and the urgency that is demanded by

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1 the experience of disaster survivors. Their lives
2 are no longer intact. Their homes, and possessions
3 are destroyed. In the wake of disaster, many do not
4 have time to trudge through multiple application
5 processes, track down paperwork, and find extra money
6 to pay for notary services, faxing services, printing
7 services, and all the other documentations that
8 require financial support.

9 The FEMA program needs to recognize the
10 unique needs confronted by low-income people of
11 color, people with disabilities, and senior citizens.
12 Adopting an informed approach to program
13 administration, where there is enough flexibility to
14 work with survivors, and tailor these eligibility
15 requirements to the available documentation and
16 capacity of survivors will assist FEMA in
17 understanding the cost, and difficulty in navigating
18 their programs.

19 The FEMA needs assessment is the first of
20 many applications for recovery that survivors are
21 required to submit. Government agencies have pushed
22 to develop significant outreach strategies in order
23 to target hard to reach survivors. If government
24 wanted to fully reach marginalized classes of
25 survivors, the needs assessment should be used as the

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1 main point of entry for the entire disaster recovery
2 apparatus. Sharing data between government agencies
3 involved in both recovery and rebuild efforts would
4 ensure that survivors have been touched by any
5 program do not get left behind.

6 It is easier for agencies to withdraw
7 people from a program after confirming they no longer
8 have that need for assistance than for survivors to
9 submit multiple applications to different sources of
10 assistance in time of crisis, and possibly lose the
11 opportunity to recover. I also referenced the effect
12 of FEMA's programs in perpetuating segregated
13 neighborhoods. In 2018, Texas Housers acquired FEMA
14 individual assistance denial rate data for
15 homeowners, and renters affected by Hurricane Harvey.

16 The overall denial rate of homeowners was
17 26 percent. Those who reported an income as over
18 70000 dollars a year only had an ineligibility rate
19 of 10 percent. While those making less than 15000
20 dollars a year had a denial rate of 46 percent. As
21 the household income climbed, their likelihood of
22 being approved by FEMA also increased. Also,
23 potentially discriminatory is FEMA's claim
24 determination, which is certified by FEMA field
25 inspectors.

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1 Poorly trained inspectors, and
2 inspectors who cannot communicate in the survivor's
3 native language lead to potential discrimination. We
4 found racial inequities in FEMA's verified lost
5 documentation. A property value-based assessment,
6 which reduces the survivor's ability to obtain
7 adequate compensation to rebuild their homes. And
8 FEMA programs do not provide financial support to
9 relocate to safer areas, which further widens the gap
10 for ability to recover for people of color.

11 FEMA data reports both the real property,
12 and personal property loss of homeowners, but only
13 determines the unmet need of renters based on their
14 personal property loss. When analyzing FEMA's Harvey
15 allocations, Texas Housers found that though renters,
16 and homeowners made up roughly equal percentages of
17 total applications received by FEMA, 84 percent of
18 assistance was received by homeowners while only 16
19 percent was offered to renters.

20 This under assessment of FEMA damage of
21 actual damages suffered by rental units means that
22 too little assistance is provided to renters by FEMA,
23 and because FEMA assessments are the basis of
24 subsequent CDBGDR funding allocations between
25 homeowners, and renters, the renter survivors who are

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1 largely people of color do not get a fair allocation
2 of funds for their needs. The coordinated
3 collection, and compilation of accurate data on
4 disaster survivors is necessary to allocate the money
5 fairly across different geographics, and populations,
6 ensuring different income levels, housing tenures,
7 and ethnicities are fairly proportionally assisted.
8 Thank you for the opportunity to testify in focusing
9 on this important matter.

10 CHAIR CANTU: Thank you for your eloquent
11 statement. Dr. Sim, we're going to hear from you
12 now.

13 DR. SIM: Thank you so much Commissioner,
14 and also to your fellow commissioners. Thank you so
15 much for this opportunity to appear before you, so
16 that I could discuss Episcopal Health Foundation's
17 survey finding, and mapping analysis of FEMA
18 application, and approval data in the aftermath of
19 Hurricane Harvey. My name is Shao-Chee Sim, I'm the
20 VP for research innovation, and evaluation at
21 Episcopal Health Foundation located in Houston,
22 Texas.

23 The foundation of EHF is committed to
24 transforming the health of our communities by going
25 beyond just the doctor's office. By providing grants

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1 working with collaborations, and community partners,
2 and providing research, EHF supports solutions that
3 address the underlying causes of poor health. The
4 foundation operates as a supporting organization of
5 the Episcopal Diocese of Texas, and works to help 12
6 million people across the 57 counties in southeast
7 Texas.

8 After Hurricane Harvey hit the Gulf
9 Coast, EHF took an intentional approach to learn
10 about how others were responding to this disaster.
11 We watched federal, state, and local governments
12 respond to this crisis. We also reached out to our
13 peers in the foundation's sector, forced us to think
14 together to understand the approaches. One huge gap
15 quickly emerged, which is data.

16 Funders, policy makers, and
17 stakeholders, community stakeholders wanted to better
18 understand the extent, and magnitude of the impact.
19 Not just at an aggregated level, but at a
20 neighborhood, and individual level. As good
21 stewards, funders want to know how we can best devote
22 our limited resources to help those most impacted in
23 a disaster.

24 We were very interested in finding out
25 how best to provide this forum where residents, and

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1 communities most impacted by the hurricane could
2 voice their experiences, and challenges in recovering
3 from the disaster. In the interest time, I'll skip
4 the mapping analysis, I'll go right in, in terms of
5 the polling projects that we had done in the aftermath
6 of Hurricane Harvey.

7 We partnered with Kaiser Family
8 Foundation to conduct a randomized probability-based
9 survey to capture the experience, challenge, and
10 needs of Texans residing in the effected 24 county
11 region. At both three months, and 12 months after
12 the hurricane. All of these reports can be accessed
13 on our foundation website, episcopalhealth.org. So,
14 very briefly, three months after Hurricane Harvey,
15 what we found was that nearly half of the affected
16 residents said they were not getting the help they
17 needed to recover from the hurricane.

18 Areas that stood out the most were people
19 applying for disaster assistance, and repairing
20 damages to their home. What we also found was that
21 White and Hispanic Texans who applied for FEMA, or
22 SVA assistance were more likely than Black residents
23 who applied to say their application was approved, 34
24 percent compared to 20 percent and 13 percent
25 respectively.

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1 Two thirds of the residents reported that
2 they suffered property damages, and environment
3 disruptions as a result of lost income due to
4 Hurricane Harvey. We also found that among those
5 whose homes were damaged, about half said they had
6 homeowners, or renter's insurance. And roughly a
7 quarter had flood insurance. Again, lower income
8 residents, black, and Hispanics, were all less likely
9 to report as having any type of insurance.

10 Immigrants who were living along the
11 Texas Gulf Coast were also more likely than their
12 native-born neighbors to suffer from income losses as
13 a result of Hurricane Harvey. So, what happened one
14 year after the hurricane? Some of the data that we
15 were able to estimate based on our randomizer was
16 that in addition to federal disaster assistance,
17 about three in ten said that they received help paying
18 for housing, and healthcare from a local, or national
19 charity.

20 Hispanic residents are somewhat more
21 likely to report receiving such help, but otherwise
22 the share who received help does not defer too much
23 by race, income, or geography. However, what we are
24 seeing also is that a growing share of affected
25 residents are saying that their lives are back on

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1 track, but three in ten said that their lives remain
2 disrupted.

3 Again, the data shows us that affected
4 residents who were Black have lower incomes, or live
5 in the golden triangle region, were more likely to
6 say that their lives are still disrupted, and less
7 likely to say they are getting the help they need
8 with recovery. So, in the wake of Harvey, many
9 affected residents, particularly those that are
10 Black, Hispanic, or have lower income, report
11 financial problems such as falling behind in their
12 rent, or mortgages, having problems paying for food,
13 taking on extra work, or borrowing money from
14 friends, and relatives to make ends meet.

15 This polling data consistently showed
16 that Black and Hispanic Texans and those that have
17 lower income were impacted disproportionately by the
18 disaster at both three months, and one year after
19 Hurricane Harvey. As a foundation we had widely
20 disseminated the mapping analysis, and polling
21 results in 2017, and 2018. Beyond just trying to get
22 median coverage, our staff, our colleagues have made
23 data presentations to various government agencies,
24 funders, and, or community stakeholder groups.

25 Thank you so much again for the

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1 opportunity to make brief remarks for the commission.
2 I'd be happy to answer any questions later on, and
3 all our reports are accessible on our website. Thank
4 you.

5 CHAIR CANTU: Thank you very much,
6 appreciate you. Now, I'm going to call on Mr. Hirsch.

7 MR. HIRSCH: Thanks so much for having
8 me, and I just want to say thank you to the people on
9 this call that are doing the incredible, and
10 difficult work, and I've been lucky to collaborate
11 with a lot of you guys over the last four years, so
12 I just want to acknowledge that. I think that the
13 people that have spoken before me have done a really
14 good job explaining at a large scale what's going on.

15 And I wanted to fill in with some
16 quotations from a neighborhood research project at
17 West Street Recovery I'm working on that I think adds
18 some, unfortunately some pain, and some detail. So,
19 this is a conversation between two community members
20 who are interviewing each other about the disaster.
21 One of them said and then like I said, my mind said
22 it changes about all that, you know, how the
23 government treats people, and I mean how the
24 government looks at certain individuals, and certain
25 neighborhoods like ours the way they do.

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1 Yes, I know because it's eye opening, but
2 at the same time it's enough to make you mad. Because
3 you know if you don't fit into certain criteria, you
4 mean just nothing to the government. Right, it
5 devalues you. Yeah, so that doesn't help your self-
6 esteem none whatsoever, knowing no matter what you
7 do, you're still going to be considered nothing, or
8 expendable by this government. So, you know, it's
9 like why believe in America?

10 America doesn't believe in me. And
11 that's a quote from a conversation between two really
12 good friends of mine, Mal Moses, and Doris Brown whose
13 homes were destroyed both by Hurricane Harvey, and I
14 think that really captures the experience of being a
15 person that lives in Northeast Houston, and trying to
16 interact with the government to recover. So, I think
17 that the problem has been really well outlined.

18 And what I want to say is that there are
19 three changes that could be made that would be really
20 impactful to improve how FEMA interacts with
21 communities. The first is that the administrative
22 burden on people applying needs to be lowered. It
23 needs to be lowered immediately, and there's a lot of
24 information that people have to apply that the
25 government already know. And this is something that

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1 residents express over, and over.

2 Why do I need to provide the deed to my
3 house when the deed is at the tax office? Why can't
4 one government agency ask for another government
5 agency to supply it? I'm going to just read a quote
6 explaining this from these interviews. A lot of these
7 agencies will ask you; do you have any pictures?
8 Pictures, I was fighting for my life. I'm sorry, I
9 forgot to take a picture, you know what I'm saying?

10 I'm sorry I forgot to take a picture of
11 me in the water in the dark. I'm sorry I forgot to
12 take a picture of my wet car totally destroyed full
13 of water. You know, this is silly stuff, it's crazy,
14 it's demoralizing, it's really something to have to
15 pose the truth over, and over again to these people.
16 These people who will never talk to you again, just
17 so that they'll help you.

18 I think that that's a really important
19 quote when we're thinking about what the FEMA
20 application process should look like, and could look
21 like. The second thing is that we need to stop
22 denying people for having heirship property. Families
23 have heirship property because often they don't have
24 the resources to transfer title, or because they're
25 using a collective economic strategy to survive in a

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1 situation of declining wealth, declining
2 opportunities, and structural oppression.

3 It's not an accident, it's often an
4 intentional choice that there are good reasons for
5 families to keep collective ownership of a property.
6 It's a colonial mentality that only one person can
7 own one piece of land, and that's being perpetuated
8 by that rule. The USDA knows that over 20000 black
9 families lost houses because of their heirship
10 property barrier after Katrina.

11 This has been known for almost 20 years,
12 and the government has the power to change that rule,
13 so I hope that this testimony does something to do
14 that. And the final thing is that the idea of
15 deferred maintenance, or that there were problems
16 that predate a storm. That is essentially punishing
17 low-income home owners for being poor. That is what
18 it is. And it is fair to say that in a moment where
19 a huge amount of capital is being injected into a
20 city post disaster, there are consultants, as someone
21 mentioned earlier there are equity consultants that
22 make a ton of money.

23 There are private case management firms
24 that make a ton of money, and their wealth is
25 increased through these processes, and the wealth of

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1 people that live in deteriorated homes, that have
2 been deteriorated through no fault of their own,
3 let's keep in mind that people face racial barriers
4 to employment, they face language barriers to
5 employment, they are denied aid.

6 In our interviews, what people said is
7 that they felt that FEMA inspectors had rejected the
8 whole neighborhood in their mind before they went
9 into a single home. And we heard stories of
10 applicants who said they got a rejection text message
11 within ten minutes of the FEMA inspector leaving
12 their house. I would love to think that those stories
13 were exaggerations, except for that I've heard so
14 many of those stories, and we have so much
15 documentation.

16 The feeling that the FEMA application
17 process, and the federal aid process is giving people
18 is this, this is another quote from this paper. It
19 was like we're living in a throw away zone, the area
20 I stay in, it's like you know, the people with power,
21 the people with money, they think everybody here is
22 expendable. But you know, nothing, you can't just
23 sweep people under the carpet without nothing being
24 done, or said about it, and I've had enough.

25 And I think that that's really important,

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1 the idea of entire communities being considered
2 expendable, or less worthy, that their lives don't
3 matter is something that is being communicated to
4 them by the way that interacting with governments is
5 quote, disaster. And it's amplifying previously
6 existing inequalities, and at each stage residents
7 are asked to make changes in their life, and changes
8 in the way they operate to access aid when all the
9 power is with the government, and the government
10 could easily make changes to make that aid more
11 accessible.

12 And so, I think that the onus is really
13 on FEMA, and also on the state, and city agencies to
14 make those changes, to make just recovery possible.
15 Thanks.

16 CHAIR CANTU: Thank you Mr. Hirsch, that
17 was a very powerful presentation. I would like now
18 to call on Tomas Aguilar, director recovery
19 coordinator for the Living Hope Wheelchair
20 Association.

21 MR. AGUILAR: Thank you Ms. Cantu. And
22 thank you Kathy, Chauncia, Julia, and Ben, and Shao-
23 Chee. I'm going to try not to cover what's already
24 been covered in the previous panels as well. So,
25 yes, I am Tomas, and I work with Living Hope

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1 Wheelchair Association, and we've been around 15
2 years, and part of the theme of what I'm going to
3 present today is, so we started as a mutual aid, as
4 they call it, organization. When budget cuts for our
5 members who are mostly injured, spinal cord injuries,
6 and are now in wheelchairs, budget cuts, so you no
7 longer have the medical supplies that you need to
8 live, right?

9 So, they started meeting together,
10 collecting, pooling resources, and giving it out to
11 each other. 15 years later we have a warehouse, two
12 small warehouses, and we give out wheelchairs,
13 catheters, spikers at no charge at all. The reason
14 I gave a little bit of context is when we're looking
15 at, and talking about natural hazards, or disasters,
16 hurricanes, earthquakes, fires, we -- right after
17 Hurricane Harvey, we came up with a survey, and an
18 easy to report preexisting conditions in a time of
19 disaster.

20 So, pretty much what we're saying is for
21 some communities, imagine not speaking English,
22 you're living as a citizen, a resident of this area,
23 where residents of Houston, if you look at some
24 buildings on Rice University campus, most of the
25 highways, anywhere you go, construction on those is

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1 being done by, among others, Spanish speaking folks.

2 You get injured on the job, and when
3 you're a low-wage worker, your body is your source of
4 income, your tool, right? So now it's broke. So,
5 living in a disaster condition, surviving day to day,
6 sometimes hour by hour, that is the reality for many
7 people here. So, add a layer of natural disaster,
8 add Hurricane Harvey to it. So then it makes
9 everything worse, and now on top of that, add the
10 pandemic, or the winter freeze.

11 So, everything that's been talked about
12 today, it's like accessing the system, if you can't
13 access it, or if you may not have documentation, so
14 you don't even try, right? Where do you go? Or there
15 may be a large agency, which they require certain
16 documents, because their federal dollars are
17 connected to it, it excludes so many different
18 people. We've talked about folks that rent, and let's
19 look a little deeper, trailer homes, right?

20 Right after Harvey, a lot of folks were
21 buying damaged mobile homes because they just painted
22 it over, and it's better than the moldy place they
23 live in. Or people just continued to live in -- and
24 if you know anything about trying to clean a mobile
25 home after a disaster, it's almost impossible, right?

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1 So, when you have these conditions, you cannot get to
2 places, it's hard even to go, and apply.

3 You get there, and collect all this
4 information, and in a different language. Oh, but we
5 translated it, and then you get this document, and
6 it's translated, and it's very legalese, and what
7 not, and it's like what? And then it's hard to
8 complete the application, you just give up. Imagine
9 calling all these systems, 211, 311, all these
10 different systems, and just to get to your language
11 is an ordeal, right?

12 And then when you get there, you're being
13 told things that are, these are the rules, this is
14 what you have to send. So, what I'm trying to say is
15 there's a lot of different layers to look at any
16 population, right? With us, we look at social
17 vulnerability index, right? Our folks live
18 everywhere, because you have to- "I am staying with
19 a friend." So, it's really hard to get counted
20 sometimes. So, we're being asked to provide data all
21 the time, and most of the time it doesn't result in
22 anything.

23 We needed data for data's sake, right?
24 I'm like well what's up with that? Although we need
25 data because we want to match them with agencies

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1 giving aid, or what not, I don't want to over burden
2 the person, so I'm just going to ask for this type of
3 data that allows them to get aid. I understand this,
4 you have good intentions, or it could be a university,
5 or a hospital, they want data for data's sake, and
6 that's all fine on a certain level.

7 But we can't keep burdening folks in the
8 middle of a disaster, right? So, we have these
9 situations that hit some communities harder than
10 others, right? We've heard from the panelists all
11 the different ways that certain communities are
12 consistently being ignored, and the result's always
13 the same. We make a few steps forward, but it's
14 always the same, right? The good thing is there can
15 be some change we think, in FEMA, and the government's
16 role.

17 Talk to folks on the ground, there's
18 groups with recovery, other folks, they're on the
19 ground, we're there, we're not going anywhere, right?
20 So, when you're designing these policies, when you're
21 designing the rules, include folks that are on the
22 ground, and not just mid-level groups, but include
23 everyone, right? And perhaps even include people
24 affected, right? That's not a novel idea, but it
25 does happen.

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1 We talk about language access, let's
2 think about language justice, and disaster justice,
3 right? We don't want to just tweak these systems, so
4 we might make the application process smoother, but
5 when we talk about justice, we want to question the
6 systems themselves, right? Disaster recovery,
7 disaster is a constant state of being, it'll get
8 worse, and for some communities, social disasters,
9 the lack of jobs, the lack of income, or access to
10 medical, those are everyday life.

11 So, what if we thought, and we start
12 rethinking the whole disaster recovery complex, and
13 the government's response. I know we have it in us,
14 and I know there's plenty of great ideas, and voices
15 on the ground, so I would invite the government to
16 come, and have a chat, and let's work on a solution,
17 something different. We can do better than what we
18 have right now, thank you.

19 CHAIR CANTU: Thank you. Thank you Mr.
20 Aguilar, and I really appreciate your optimism. I
21 appreciate the positive statements of all of the
22 panel, you all have showed me why I'm really proud to
23 be a part of the Texas community, and the U.S.
24 community. Americans are innovators, and we're
25 innovators first. So, this panel has done a terrific

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1 job of sharing how wide the problem is, and offering
2 some really cogent potential solutions that I'm
3 optimistic about.

4 I'm going to turn now to my colleagues,
5 I see Commissioner Adams already has his hand up,
6 that's a good way to catch my eye, because my eyes
7 are jumping across the screen. Commissioner Adams.

8 COMMISSIONER ADAMS: Thank you very much
9 Madam Chair. My question is for Mr. Hirsch. Mr.
10 Hirsch, you testified, at least in your written
11 testimony about the FEMA applications requiring
12 paperwork, proof of income, you call it extensive
13 documentation of damage. You indicated that these
14 folks are expected to go through the arduous work of
15 collecting the documents. What would you propose
16 replace documents, such as photographs, or other
17 evidence of damage? What would you propose replace
18 these arduous documents?

19 MR. HIRSCH: Thank you for the question.

20 COMMISSIONER ADAMS: That's all right.

21 MR. HIRSCH: I think there is two things
22 I would suggest, one is as I said in my spoken
23 testimony, any document that another government has
24 should be moved from government to government. So,
25 for example the IRS has income information, and the

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1 counties, and cities have home ownership information,
2 so that's one thing I would suggest, and maybe an
3 applicant could opt into it.

4 The second thing is if you've ever, in
5 our experience, one of the things that you have to be
6 able to demonstrate is the difference between before,
7 and after a storm. So, I don't know about you, but
8 I've never walked around my house, and taken pictures
9 of the four corners of the house every few months in
10 case a disaster is going to come through for example.
11 I think it is true that some visual indication of
12 damages is fair to ask for people.

13 But what I think is having done the
14 application, and appeal process with many, many
15 people, and being someone who is incredibly
16 privileged, and has a master's degree, the amount of
17 documentation that you're asked to provide is a lot,
18 and that the thresholds should be lower. The burden
19 of proof should be lower, particularly when there are
20 actually maps of where it flooded.

21 So, for example we have people, one of
22 the streets we work on, Kellett Street, everyone on
23 the street got 5 and a half feet of water in their
24 house. So, when two people, 8911, and 8915 prove
25 that there was five feet of water, the house in

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1 between them clearly also got five feet of water.
2 So, what I think is that the burden of proof should
3 be lowered, and I think it's a very fair question,
4 how would we do that?

5 COMMISSIONER ADAMS: If I might follow
6 up, let's talk about how far it should be lowered.
7 In the example you just gave with the two houses got
8 flooding, and the one in between that obviously
9 probably did, is it your suggestion that there be no
10 obligation whatsoever to show damage for that house
11 with documents, or photographs, is that what you're
12 suggesting?

13 MR. HIRSCH: My suggestion is not that
14 there would be no documentation, but I think for
15 example, if you've ever gotten in a car accident, the
16 kind of documentation you have to give where you write
17 a little paragraph, or you talk to the insurance
18 adjuster on the phone to describe what happened,
19 Geico can approve a claim based on that.

20 Unfortunately, I've been in a car
21 accident, and experienced that, it's not an
22 advertisement for Geico. But that's what I would
23 suggest, is that a more accessible, and human process
24 should be applied, and that pictures are great, but
25 the idea that if you didn't have a pre-disaster

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1 picture, and one of the things that happened is that
2 gets combined with that bias that people have.

3 You're a Black person, your house was
4 decrepit before, I mean I'm going to say, that's what
5 we heard, and so --

6 COMMISSIONER ADAMS: And so, this is
7 something FEMA adjusters, or investigators are
8 telling people? That you're a Black person, your
9 house is decrepit?

10 MR. HIRSCH: Well, that's what in our
11 testimony, in our interviews that we've done about
12 how people felt, and what their experience was, they
13 said that their whole neighborhood had been rejected
14 based on preconceived notions of how people lived in
15 those areas. And I think if you, I see the director
16 of Fifth Ward nodding your head there, and I think
17 that's a pretty consistent impression that people in
18 northeast Houston --

19 COMMISSIONER ADAMS: I want to make sure
20 that the record is clear on this, because there will
21 be a transcript that the staff will build off. Are
22 you suggesting you have incidents of FEMA employees
23 saying you're a Black person, your house is decrepit,
24 or are they just leaving that impression with
25 somebody?

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1 MR. HIRSCH: That's a great point of
2 clarification, they're leaving that impression. And
3 I would also that in the zip code we mostly work, the
4 approval rate was 12 percent for FEMA applicants.
5 So, there is a number there, that maybe these people's
6 experience of their own life is accurate.

7 MS. WILLIS: Fifth Ward can attest that
8 there are families that their houses are being told
9 that they're depreciable, and not supported.

10 CHAIR CANTU: Okay, any other
11 commissioners would like --

12 COMMISSIONER ADEGBILE: Commissioner
13 Kirsanow raised his hand.

14 CHAIR CANTU: Thank you, I didn't see
15 that.

16 COMMISSIONER KIRSANOW: I just wanted to
17 drill down a little bit more, because this gets to
18 the crux of it. First of all, thank you very much
19 for your testimonies. How is it that FEMA is leaving
20 this impression? What are they saying, what are they
21 doing that leaves the impression in the minds of
22 homeowners that they're being treated differently
23 because their homes are decrepit because they're
24 black?

25 CHAIR CANTU: Is there someone in

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1 particular you'd like to answer that?

2 COMMISSIONER KIRSANOW: Anybody who has
3 any information.

4 CHAIR CANTU: Anyone on the panel please.

5 COMMISSIONER KIRSANOW: Let us know what
6 is being said by FEMA representatives, and what's
7 been reported that they have said that could give the
8 impression that FEMA is rejecting them, or treating
9 them differently on the basis of race.

10 MS. FLANAGAN-PAYTON: This is Kathy
11 Payton from Houston's Fifth Ward. We've had a number
12 of instances directly in Fifth Ward where the housing
13 stock is greater than 40 years old. And so the value
14 of the current home is depreciated, and they are being
15 told specifically that the value of the home makes
16 them ineligible to receive the benefits. And it's
17 not as blatant, and directly to say that it's because
18 they're Black.

19 But it's because of the age, and the
20 condition of the housing stock in the area, and their
21 home as well.

22 COMMISSIONER KIRSANOW: Thank you.

23 MR. HIRSCH: I'd love to send you our
24 report of these interviews, but one thing that we
25 hear consistently, or two things, inspectors that

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1 don't go into the house, so they just stand in the
2 yard, and then someone gets denied. So, that's a
3 sign that they didn't really take the issue
4 seriously. Or that they're under staffed, right?
5 That's a problem that could be solved. And another
6 one, visible mold in their house, and being told that
7 their home is livable.

8 The home is clearly not livable, and
9 being told they're livable, and that gives them the
10 impression that they're expected to live in a
11 dangerous situation, that that's acceptable to the
12 government.

13 COMMISSIONER YAKI: Mr. Aguilar.

14 MR. AGUILAR: Yes, I would like to add,
15 and again, these are interviews taking place right
16 after Harvey, and visiting homes. We raised a small
17 amount of funds to help folks out, and among the
18 comments as well is, and I will clarify, not just
19 FEMA, but the different types of aid coming in,
20 comments such as well, it was already moldy to begin
21 with, and you don't mind living, that was a comment,
22 you don't mind living that way.

23 Comments to that effect, right, and it's
24 like well how you live, and the person asks, you know,
25 in Spanish (foreign language spoken), and they're

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1 like how do you live, what do you mean, how do I live,
2 and you know, and then it kind of dies out there,
3 right? So, there's ways that aren't as explicit as
4 saying in this case you're Latino, blah, blah, blah,
5 and that's your fault. You don't have to say that
6 when you have those dialogues like that, and there's
7 this resistance right from the start.

8 It's how you live, it's loaded, right? I
9 just want to throw that in there, because it's not
10 always very straight forward.

11 CHAIR CANTU: Yes, Commissioner Kladney.

12 COMMISSIONER KLADNEY: I'm sorry, I'm a
13 little confused, but when you said Ms. Payton, that
14 your people in your ward were told the house is
15 depreciated, are they saying that the house isn't
16 worth repair, or that they just would as soon not
17 repair it, or just pay whatever it's worth, and leave
18 it as it is? I'm confused on that.

19 MS. FLANAGAN-PAYTON: The house isn't
20 worth repairing, and, or they couldn't identify the
21 damages that were actually sustained by that
22 particular storm, and either way the claim is denied.

23 COMMISSIONER KLADNEY: Thank you very
24 much.

25 MS. FLANAGAN-PAYTON: Thank you.

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1 CHAIR CANTU: Commissioner Gilchrist?

2 COMMISSIONER GILCHRIST: Thank you Madam
3 Chair, I just want a quick follow up on this. So,
4 these reports that the panelists are raising, I'm
5 curious to know if any of these allegations were
6 reported directly to FEMA? And that's for anybody
7 that wants to answer.

8 COMMISSIONER YAKI: I think we raised
9 them at the first hearing, I did.

10 COMMISSIONER GILCHRIST: I'm sorry?

11 COMMISSIONER YAKI: I raised those at the
12 first hearing that we had with the FEMA
13 representatives back a few months ago.

14 MR. AGUILAR: I can answer for us. Any
15 of our constituents, whether they're documented,
16 undocumented, whether you have a record, we value
17 privacy, and confidentiality, and the purpose for us
18 is to try to match them with aid wherever it may come
19 from. But we take seriously this idea of not sharing
20 this information. Sometimes we share aggregate data,
21 and we have, but we don't match it up. So, in cases
22 like that, I would answer no, but it's a bigger
23 context to look at. Yeah, for those reasons.

24 COMMISSIONER GILCHRIST: Okay, thank you.
25 Anybody else want to weigh in on that?

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1 MS. ORDUNA: This is Julia, I would just
2 like to say that I do believe that lots of people do
3 try, and appeal, and go through the appeal process,
4 which is also a very tedious process for people. I
5 will mention that I worked with someone that was
6 affected by Harvey, is still living in a gutted home,
7 and she was affected also by Imelda.

8 And when the Imelda inspector came, which
9 we know that FEMA should apply, give assistance for
10 whatever, that storm, that was dedicated to that
11 storm, she was flooded in Imelda, and the inspector
12 told her that all the damages that were currently in
13 her home were Harvey based. And so, her denial
14 letter, as a previous panelist said, it said home is
15 safe to occupy. That was her denial. And she
16 applied, or she appealed several times, and she
17 continued to be denied.

18 So, she did not get any FEMA assistance
19 for her damages in Imelda because her home is still,
20 and continues to be devastated by Hurricane Harvey.

21 COMMISSIONER GILCHRIST: Thank you,
22 anybody else want to weigh in on that?

23 MR. HIRSCH: Just to say that we've
24 helped a number of families to appeal, and a number
25 of those appeals have been successful. So, instead

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1 of filing a complaint, I mean a family's main interest
2 is to get the aid that they need, so that's been our
3 approach.

4 MR. AGUILAR: I would like to add another
5 thing to this. So, when I got the information for
6 this panel, and I was reading it, and I was
7 questioning, if the goal is yes FEMA, but the goal is
8 to help them to have a just recovery, right? A
9 recovery that is fair, and equitable, and how can we
10 change the things that aren't working, and build on
11 the things that are? If that's one of the goals, in
12 our communities, we're so far removed from -- we do
13 have a few folks that have applied to FEMA, and some
14 that have actually gotten it.

15 But most are so far removed from that, so
16 we're depending on maybe local, county charities, and
17 all this, but it's the same thing. How do we recover
18 for this? How do we survive this disaster, right?
19 So, if the goal is an overarching, we need to make
20 this better, and all this, I think what I offer isn't
21 so much FEMA, it's the whole process, right? And I
22 think it's a worthy goal, and I think FEMA has a large
23 role to play in it. But I would be lying if I said
24 yeah, FEMA listened.

25 No, because we're so far removed from

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1 that. If you're a rancher staying in a trailer, a
2 transient staying here, and there, it's a different
3 world, but there's thousands, and thousands, and
4 thousands of people living like that. Thank you.

5 COMMISSIONER GILCHRIST: Thank you.
6 That's all I have Madam Chair.

7 COMMISSIONER ADEGBILE: Madam Chair, I
8 think you're on mute, are you calling on me, or
9 Commissioner Yaki?

10 CHAIR CANTU: I apologize, I'm sorry.
11 All right, the queue is Michael Yaki, then Debo
12 Adebile, and then I saw another hand, who was it?
13 Okay, that's the queue.

14 COMMISSIONER YAKI: I think it's both our
15 hands showing at this point.

16 CHAIR CANTU: Okay, there you go.

17 COMMISSIONER YAKI: I had a quick
18 question, first of all, the heir property thing sort
19 of blows my mind. But it goes into the whole issue
20 of documentation in general, and I want to reference
21 specifically to the Latinx, or Hispanic community.
22 To what extent was it made public that FEMA aid was
23 available to, regardless of your documentation status
24 in terms of Hurricane Harvey.

25 Was that well publicized, or was it

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1 something -- because I hear that people were
2 concerned about applying for federal aid because of
3 their immigration status in this country, I'm just
4 wondering if anyone here has any information about
5 that.

6 MR. AGUILAR: Yeah, sure. With us, we
7 would assess, very few people are owners, if folks
8 were owners, we would explain what we knew of FEMA,
9 and we had a process to get them to the office, or to
10 get someone to help them. And we would explain what
11 we knew, we had a fact sheet of it. But also, just
12 because that's -- anyone can apply, you don't have to
13 be this, and that, there's still all these other
14 barriers that Ben, and others mentioned as well,
15 right?

16 And that complicates itself when you
17 start throwing it through another language, and also
18 culture's a big thing, and what your background is.
19 Like Ben said he has a master's, and he found it
20 confusing. So, yeah, so when it was relevant in our
21 surveys, yes, here, and this is what it is, and this
22 is what we understand, we would always send them
23 there, but very few people, because most of our
24 community in wheelchairs, trailer homes, and renting.

25 But yes, we did refer, and there was

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1 information everywhere, but just because you drop off
2 a flyer, or get an email, that's just the tip of it,
3 right?

4 COMMISSIONER YAKI: Got it.

5 CHAIR CANTU: Thank you. Okay, and after
6 Adegbile, I'm going to have to do a hard stop unless
7 there's someone who really needs to get in a last
8 word. You've got the last word commissioner Adegbile.

9 COMMISSIONER ADEGBILE: Thank you. I
10 just wanted to come back to the conversation about
11 the perceptions, and, or experiences with race
12 disparities, or feeling that people are being treated
13 differently on the basis of their race by the
14 government. Some of what I hear is that there's a
15 perception that there are traces of the structural
16 assessment that disadvantage neighborhoods that may
17 be, that are not racially segregated by law, but there
18 are many neighborhoods that by virtue of history, and
19 practices of Texas, and elsewhere are racially
20 identifiable neighborhoods.

21 Their census tracks that are minority
22 majority neighborhoods, very often they're not
23 minority majority neighborhoods by accident, there is
24 a history that's led to them, including a government
25 involved history that has helped define some of these

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1 neighborhoods, and so they are characterized that
2 way, and they're known to be that way, and very often
3 it may affect property values, and comparative
4 property values.

5 So, what I'm hearing is that there is, in
6 a sense, some of the structures, and the history, the
7 claims of race in America are leading to a factor
8 where, when aid is being doled out after a hurricane,
9 some of the structures and history is (audio
10 interference) for people that have already been
11 disadvantaged in these neighborhoods, are having that
12 disadvantage in a sense compounded by some things
13 that are not within their control.

14 But then separately I did here that there
15 is some conduct, there is some circumstantial
16 evidence of workers that may be otherizing, or making
17 assumptions about the value, standing in a yard to
18 make a judgement about what's inside, and what the
19 condition of a home is, or making assumptions more
20 broadly that people feel. That they feel when they're
21 having these experiences.

22 And we know that these things are not
23 made up, because there are recent studies where black
24 people have been in a home, a biracial couple, a black
25 person is in a home showing their home, and the

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1 appraiser will value the home less than when an
2 appraiser comes back, and the White spouse is in the
3 home, and, or the Black art, and accouterments of
4 African American tradition are taken down from the
5 interior of the home, and the appraiser, again --
6 this is not in a FEMA context, I want the record to
7 be clear.

8 The example that I'm giving is a well
9 described example, people can google it, and find it,
10 it's not in a FEMA context, but I'm just suggesting
11 that there are ways in which people can discern that
12 people are being treated differently by virtue of
13 where they live, and assumptions that are being made.
14 So, what I'd like to hear in light of that is do you
15 have any concrete suggestions about how we can have
16 FEMA more justly, and equitably respond to hurricane
17 disasters?

18 What are the one, or two things that you
19 think could help FEMA more justly, or equitably
20 provide its service, which is in everybody's
21 interest?

22 MS. WILLIS: Commissioner, if I may, this
23 is Chauncia once again, for the Institute for
24 Diversity and Inclusion and Emergency Management.
25 I've been an emergency manager for almost 25 years.

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1 There are many things that FEMA could do to make
2 disaster response, and recovery more equitable. As
3 we discussed earlier, training the cadre of
4 responders, and inspectors not only in antiracism,
5 but also in basic cultural competency.

6 Which is to respect, and understand the
7 culture, and the languages of the people, and the
8 neighborhoods, and communities that they're entering,
9 and serving. That's just one basic step. And when
10 we discuss the issue of denial rates for lower income
11 communities, for communities of color, that is
12 actually proven by data. So it is not inferred, it
13 is not a perception, it is proven. And there are many
14 articles that are available, and research that is
15 being done, and has already been done on these
16 subjects.

17 It's important to mention that that cost
18 benefit analysis is inequitable. Anything that adds
19 more complexity to recovering is inequitable. A lot
20 of these programs, and proofs of insurance, or proofs
21 of documentation to protect the federal government,
22 not the people they're serving. It's done to, in
23 their minds, mitigate fraud. But there is only ever
24 one percent of fraud that is occurring in many of
25 these disasters.

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1 So, you're protecting 1 percent of a
2 chance for fraud. The majority of people are denied
3 because they are being turned away because of a
4 likelihood, or a thought that there is a likelihood
5 of fraud, similar to looting. It just doesn't happen
6 in the way that the media may report, or the federal
7 government feels it occurs. It's not happening in
8 that way. So, a lot of what we're seeing, and what
9 the data is proving, frankly, is that bias, and racism
10 come to the table. If you have it with you as an
11 inspector, you bring that to the job.

12 If you have bias, or any element of
13 discrimination inherently within you, you bring that
14 to disaster response, you bring that to preparedness.
15 You bring that to mitigation, and funding decisions.
16 We haven't even discussed infrastructure, because
17 honestly a lot of this could be mitigated by providing
18 funding to lower income neighborhoods, but
19 unfortunately mitigation funding just doesn't go to
20 these lower income communities, and it's because of
21 discrimination.

22 So, there's more to discuss, but I see
23 the chair giving me the signal, so thank you.

24 **VI. CLOSING**

25 CHAIR CANTU: Chauncia Willis, I see the

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1 other panelists nodding at your powerful statements,
2 and I am very grateful for it. I apologize we're not
3 going to have enough time, because I've got to give
4 information to the general public listening, that
5 there is going to be an opportunity to supplement the
6 record, and that you and panelists can do this.

7 But the general public also has that
8 access to us. So, let me give you that information.
9 This brings to end the briefing part of our meeting,
10 and I'd like to thank the opportunity to thank all
11 our panelists, it's been very informative. And on
12 behalf of the entire commission, I want to thank the
13 panelists for sharing their expertise with us. Also,
14 again, thank the staff, they've worked very, very
15 hard in the past two months during a pandemic to pull
16 this virtual hearing together.

17 And in advance, they're going to keep
18 working on this, so in advance I'm going to thank
19 them for going through, and combing through all this
20 information, and incorporating it into a report. The
21 record for the briefing shall remain open for the
22 next 30 days. If panelists, or members of the public
23 would like to submit materials, they can submit to
24 the commission, but no later than November 22nd.
25 November 22nd, 2021.

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1 The email is very easy, it's one word,
2 Harvey briefing, harveybrifing@usccr.gov. If you
3 mail it, our address is OCRE Public Comments
4 Attention Harvey Briefing, U.S. Commission on Civil
5 Rights. And our address is 1331 Pennsylvania Avenue
6 Northwest, suite 1150 Washington D.C., 20425. This
7 commission encourages the use of mail to give public
8 comments due to the pandemic. So, don't phone it in,
9 don't try to come to our office.

10 **VII. ADJOURN MEETING**

11 Please use the address 1331 Pennsylvania
12 Avenue Northwest, suite 1150 Washington D.C., 20425.
13 I want to thank you all, it's been a blessed day, I
14 have learned so much from all of you. The briefing
15 has ended, be safe.

16 (Whereupon, the above-entitled matter
17 went off the record at 3:01 p.m.)
18

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Appendix C Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico



U.S. Commission on Civil Rights Public Briefing:
Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico

Friday, December 10, 2021

InterAmerican University of Puerto Rico Law School, 170 C. Federico Costas, San Juan,
00918, Puerto Rico

Also [live-streaming](#)

Expert Panels: 9:10 a.m. – 12:40 p.m. AST
Open Public Comment [Session](#): 1:40 p.m. – 5:50 p.m. AST*

AGENDA

Introductory Remarks: 9:00 a.m. - 9:10 a.m.

Panel 1: 9:10 a.m. - 11:05 a.m.

- **Omar Marrero**, Secretary of State, Puerto Rico
- **Carmen Yulin Cruz Soto**, Former Mayor of San Juan & Weissman Center Fellow in Leadership, Mount Holyoke College
- **Charlotte Gossett Navarro**, Chief Director Puerto Rico Operations, Hispanic Federation
- **Sergio Marxuach**, Policy Director & General Counsel, Centro para la Nueva Economía
- **Cristina Miranda**, Executive Director, Liga de Ciudades
- **Ever Padilla-Ruiz**, Executive Director, Comisión de Derechos Civiles
- **Diane Yentel**, President/CEO, National Low Income Housing Coalition

Break: 11:05 a.m. - 11:15 a.m.

Panel 2: 11:15 a.m. - 12:45 p.m.

- **Ariadna Michelle Godreau Aubert**, Executive Director, Ayuda Legal Puerto Rico
- **Tania Rosario Mendez**, Executive Director, Taller Salud
- **Ruth Santiago, Esq.**, Comité Dialogo Ambiental

- **Carla Minet**, Executive Director, Centro de Periodismo Investigativo
- **Yarimar Bonilla**, Director, Center for Puerto Rican Studies
- **Amaris Torres Rivera**, Executive Director, Fundación Fondo de Acceso a la Justicia

Break: 12:45 p.m. – 1:45 p.m.

Public Comment Period: 1:45 p.m. – 5:50 p.m.

- Members of the public who wish to address the Commission will have an opportunity to do so during an open public comment session that will take place between 1:45 p.m. and 5:50 pm Atlantic Standard Time (AST). Each individual will have up to five (5) minutes to speak, with spots allotted on a first-come, first-serve basis. Individuals will be able to register for open comment session speaking slots, both online and at the briefing (in-person). See additional details [here](#).

Break: 3:40 p.m. - 3:50 p.m.

Closing Remarks: 5:55 p.m. - 6 p.m.*

*End time subject to change

**Public Comments will also be accepted through written testimony

U.S. COMMISSION ON CIVIL RIGHTS

+ + + + +

IMPLICATIONS OF DISASTER RELIEF:
HURRICANE MARÍA

+ + + + +

FRIDAY, DECEMBER 10, 2021

+ + + + +

The Commission convened via
teleconference at 9:00 a.m. ADT, Norma Cantú, Chair,
presiding.

P-R-O-C-E-E-D-I-N-G-S

PANEL 1

(9:08 a.m.)

CHAIRWOMAN CANTÚ: Welcome and good morning to the Commissioners, Commission staff, our panelists, and the public. We are live in San Juan, Puerto Rico at the Interamerican University of Puerto Rico Law School, and watching and listening virtually. This briefing will come to order. This is a briefing of the U.S. Commission on Civil Rights on Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico. It is 9:08 AM Atlantic Standard Time on December 10, 2021.

Commissioners present at this briefing are present virtually and in person. And they are Commissioner Adams, Commissioner Adegbile, Commissioner Gilchrist, Commissioner Heriot, Commissioner Kirsanow, Commissioner Kladney, and Commissioner Yaki. A quorum of the U.S. Commission on Civil Rights is present. I note for the record that the staff director and the court reporter are present.

I wish to welcome everyone to our briefing on Civil Rights Implications of Disaster

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1 Relief: Hurricane María in Puerto Rico. The field
2 briefing has three goals. First, to review the
3 Federal Emergency Management Agency, FEMA, and their
4 role in disaster preparedness and response. Secondly,
5 evaluate efforts by FEMA to comply with the Robert T.
6 Stafford Disaster Relief and Emergency Act along with
7 other federal civil rights laws and policies. And
8 three, compare the response of FEMA to significant
9 hurricane systems, including but not limited to
10 Hurricanes Harvey and María.

11 Today's briefing will focus on the civil
12 rights implications of the federal response and
13 impact of Hurricane María in Puerto Rico by receiving
14 testimony from subject matter experts such as
15 government officials, academics, advocates, and
16 during today's briefing, in person public comments
17 from those people who were impacted by the
18 hurricanes.

19 Before we begin our briefing, I'd like to
20 address a few housekeeping matters. I share deep
21 thanks to Commission staff who researched and brought
22 today's briefing into being, including the expert
23 team we have who worked on the logistics for which
24 organizing a field briefing is compounded by the

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1 global pandemic environment, and it presents a whole
2 host of additional challenges.

3 I'd also like to thank our partners,
4 Puerto Rico, the Interamerican University of Puerto
5 Rico Law School; its Associate Dean of Academic
6 Affairs, César Alvarado; and professor and
7 commissioner of the Civil Rights Commission in Puerto
8 Rico, Andrés Córdova; the Civil Rights Commission in
9 Puerto Rico, its executive director, Edward Padilla
10 Ruiz, and their staff. Their partnership made the
11 commission's trip and today's briefing possible.

12 A special thank you to the community
13 leaders in El Caño and Loíza for meeting with us
14 yesterday and sharing their collective ongoing
15 efforts to rebuild their communities after Hurricane
16 María. And finally, I thank Staff Director of the
17 U.S. Commission on Civil Rights, Manuel Morales, for
18 his leadership. And I thank my colleagues on the
19 Commission for their leadership.

20 A note on the resources available today.
21 For anyone in need of language translation services,
22 please see our staff and volunteers at the
23 registration desk for translation equipment. If
24 during the briefing anyone requires emotional

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1 support, please see one of our volunteers who will
2 direct you to the therapists we have on site. This is
3 very serious, and some people may be triggered, and
4 so we will be there for you. If you wish to sign up
5 for the public comments, please see one of our
6 volunteers who will direct you to the sign- up room
7 for further information.

8 And finally, the COVID cleaning protocol.
9 Due to the ongoing pandemic, the university is taking
10 extra precautions for this event. The briefing will
11 break for one hour at lunch because the time is
12 limited to complete this cleaning. Please be sure to
13 leave as soon as possible when we announce the break
14 for lunch, and please be sure to take all your
15 belongings with you as we cannot guarantee they'll
16 still be there, or maybe they will be so sanitized
17 you won't recognize them.

18 During the course of the testimony and
19 the question-and-answer period, I caution all
20 speakers, including our commissioners, to refrain
21 from speaking over each other for the ease of
22 transcription. Additionally, I will need to queue our
23 staff behind the scenes for the appropriate video and
24 audio support. So please wait to speak until I have

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1 called upon you.

2 Panelists, you each have seven minutes to
3 speak. Please note that to ensure that we have
4 sufficient time for our discussion this morning, I
5 will enforce the seven-minute rule. Please monitor
6 your time so you do not risk my cutting you off mid-
7 sentence, and I will do it. I will strictly enforce
8 the time allotment given to each panelist to present
9 his or her statement. And if we didn't receive your
10 testimony, that's all right, because we could
11 supplement the record. But when you sent your
12 testimony, that means that we have it and we've read
13 it. So you can summarize it, and we will appreciate
14 that so that you can use your seven minutes best.
15 Focus your remarks on the topic, and we will all be
16 happy and smiling when this is over.

17 After the panel presentation,
18 commissioners will have the opportunity to ask
19 questions within the allotted period of time. It
20 varies from panel, the larger panels have an hour,
21 the smaller panels have 45 minutes, and I will
22 recognize the commissioners who wish to speak. I ask
23 my fellow commissioners to do our part and keep our
24 questions and comments concise, and to be cognizant

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1 of the interests of having each commissioner be
2 allowed to ask questions. So please be brief so we
3 can move quickly and efficiently.

4 Today's briefing features 13
5 distinguished speakers who will provide us with a
6 diverse array of viewpoints. Panel 1 would consist of
7 speakers who will discuss the role and
8 responsibilities in the execution of federal aid and
9 response to natural disasters. Panel 2 will consist
10 of advocacy nonprofit relief groups and academics who
11 will discuss the impact of the federal government
12 response on these communities.

13 So with those bits of housekeeping out of
14 the way, we're going to proceed and I turn now to
15 Commissioner Adegbile for opening remarks.

16 COMMISSIONER ADEGBILE: Good morning.
17 It's good to be with you. I'd like to thank all of
18 you for coming today and the U.S. Commission on Civil
19 Rights is very pleased to be here with you and to be
20 here with you in person. Today's briefing continues
21 what is a 60-year tradition of having this body, the
22 United States Civil Rights Commission, come into the
23 field to be proximate to the civil rights issues that
24 face the people of the United States. We're very

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1 pleased to be here, and this is the third in a series
2 of three briefings that we have had on hurricane
3 response topics and FEMA's role.

4 With this in-person briefing we're also
5 going to reintroduce a public comment session. In our
6 prior briefings -- two that I will describe in a
7 moment -- we did them virtually because of the
8 pandemic. And in that virtual format, the public
9 comment was difficult to accomplish. Today, due to
10 the courtesy of our hosts here at Interamerican,
11 we're going to be able to hear from public members
12 that want to share their comments as well.

13 As the Chair noted, during our trip we've
14 already had the opportunity to travel a bit around
15 the island and to see and hear, importantly, from
16 members of the community. Yesterday, we spent some
17 powerful hours with the people at El Caño and then at
18 Loíza, as you've heard. Those meetings added layers
19 to the continuing difficulties that people face on
20 the other side of the hurricane and animated for us
21 in a very powerful way what the continuing needs are
22 to recover. Hearing from those members was an
23 integral part of this trip.

24 The purpose of our study, as the Chair

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1 has noted, is to gather this information about
2 hurricane response to put it in a report that will
3 ultimately be available to both The President and
4 Congress so that we can improve. In particular, we're
5 looking at the responses to Hurricane Harvey in Texas
6 and Hurricane Maria here, that we understand there
7 have been several hurricanes that have impacted these
8 parts of the country.

9 During the June virtual briefing, we
10 heard from, among others, the acting associate
11 administrator of Response and Recovery at FEMA, the
12 Region 6 administrator from FEMA, the deputy
13 inspector general from DHS OIG, the deputy inspector
14 general from HUD OIG, the director of Homeland
15 Security and Justice, and the director of the Office
16 of Equal Rights at FEMA.

17 In October of this year, we held a
18 virtual briefing where the focus was on the people of
19 Houston, Texas. And there we heard from state and
20 local governments as well as impacted members of the
21 community and local advocates. Today, of course, we
22 are with you here in San Juan, Puerto Rico to hear
23 from state and local government officials, non-
24 governmental organizations, and community

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1 organizations, as well as the impacted community.

2 We very much look forward to your
3 testimony, and it's our hope that our work together
4 will help improve the United States' ability to
5 respond to these disasters, which unfortunately we
6 will continue to face. Thank you very much.

7 CHAIRWOMAN CANTÚ: Thank you,
8 Commissioner Adegbile. I turn now to Commissioner
9 Yaki for opening remarks.

10 COMMISSIONER YAKI: Thank you very much,
11 Madam Chair.

12 This is an intensely personal hearing for
13 me for a number of reasons. First, you are our first
14 in-person briefing since COVID, and we are honored
15 that you are our first in-person briefing because we
16 could not -- I could not fathom having this
17 investigation without coming here, meeting you, going
18 out into the communities, going to Caño Martín Peña,
19 going to Loíza. These are the things that make to me
20 the Civil Rights Commission come alive.

21 But it's intensely personal to me because
22 I have lived through a natural disaster. I went
23 through an earthquake in San Francisco some years
24 back. I've lived overseas, where the Pacific

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1 equivalent of typhoons came and just ravaged the
2 islands in which I lived. And when I saw what was
3 happening to Puerto Rico from María, and I was
4 watching what wasn't happening it did not strike me
5 as a good thing. It did not strike me as a just thing.
6 It did not strike me that we were doing what we should
7 do for citizens of our country.

8 And so that's why we are here today,
9 because we want to know what happened, how it
10 happened. And in particular, as we have looked at the
11 comparisons between Harvey and María, and frankly it
12 wasn't that hard of a comparison to do in many
13 respects, except for one, and one that we keep on
14 hearing time and time again, whether it's from a
15 virtual hearing in Houston, whether it's in El Caño,
16 whether it's in Loíza, whether it's going to be from
17 here today, and that is FEMA's ability or lack thereof
18 to deal with Spanish language people and culture.

19 But there's more to that when it comes to
20 Puerto Rico. I mean that's one of the great things
21 about going out and talking to people out in the
22 communities, understanding the bigger challenges that
23 are here, where we know that cookie cutter responses
24 do not and cannot and never have really worked, they

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1 must be tailored to the individual communities in
2 which we work, in which you live. But having a federal
3 government that doesn't understand that, that doesn't
4 address that, and in some ways, in so doing,
5 discriminates against you for doing that, that's what
6 we want to hear from you today. So I want to thank
7 all of you for coming forward and talking to us today.
8 I want to thank the staff for their great work here
9 today. I really want to thank Ever and Ariadna, and
10 the others who all pulled together people whose
11 stories we heard firsthand yesterday and we'll hear
12 again today from you.

13 So thank you all very much. We are
14 honored to be here. I am honored to be here in our
15 first in-person briefing in almost two years. So
16 thank you very much.

17 CHAIRWOMAN CANTÚ: Thank you,
18 Commissioner Yaki. Let me now introduce the
19 panelists, and it will be a brief introduction so I
20 can yield the time back to you all. You have many
21 fascinating aspects of your careers, and I'm going to
22 abbreviate it. So I apologize in advance.

23 Our first speaker this morning is Omar
24 Marrero, Secretary of State, Puerto Rico. Our second

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1 speaker is the Honorable Carmen Yulín Cruz Soto,
2 former mayor of San Juan and Weissman Center Fellow
3 in Leadership, Mount Holyoke College. Our third
4 speaker is Charlotte Gossett Navarro, chief director
5 Puerto Rico Operations Hispanic Federation. Our
6 fourth speaker is Sergio Marxuach, policy director
7 and general counsel Centro Para la Nueva Economía,
8 Center for the New Economy.

9 Our fifth speaker is Cristina Miranda,
10 executive director Liga de Ciudades Puerto Rico, The
11 League of Cities Puerto Rico. Our sixth speaker is
12 Ever Padilla Ruiz, executive director Comisión de
13 Derechos Civiles, Commission on Civil Rights. Our
14 seventh and final speaker for our panel 1, is Diane
15 Yentel, president CEO the National Low Income Housing
16 Coalition.

17 Secretary Marrero, welcome. Please
18 proceed.

19 MR. MARRERO: Good morning. Thank you very
20 much, Chairwoman Cantú and members of the U.S.
21 Commission on Civil Rights. For me it's a pleasure
22 and honor to be in front of you to talk about the
23 issue that we have in front of us. For me it's also
24 an honor to be the first -- to be part of the first

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1 in-person meetings since COVID-19. Thank you for the
2 opportunity to appear before you to discuss the
3 Federal Emergency Management Agency, FEMA's role in
4 disaster preparedness and response to Hurricane María
5 in Puerto Rico.

6 Over the last four years, the government
7 and FEMA have engaged in extensive collaboration to
8 address one of the most complicated and largest
9 disaster relief in U.S. history. Since day one, the
10 people of Puerto Rico and the government of Puerto
11 Rico has essentially asked to be treated as any other
12 U.S. jurisdiction within the U.S. flag.

13 As FEMA has always said, every disaster
14 has to be federally supported, state managed, and
15 locally executed. So, if we do that in every single
16 corner of the U.S. nation, we will not necessarily
17 have to tailor disaster aid. It's just to support the
18 government of the people to execute and be able to
19 address disaster response.

20 I think that one of the most complex
21 aspects of the disaster response and disaster
22 recovery in Puerto Rico is the fact that before
23 Hurricanes Irma and María, Puerto Rico was already
24 facing a manmade disaster, which was the fiscal and

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1 economic crisis that started in 2006. And this is
2 very important to have in mind because it was in 2016
3 that Congress approved the law known as PROMESA,
4 which is essentially a law that allowed Puerto Rico
5 or provided the government of Puerto Rico to have a
6 very similar -- or two ways to restructure our debt,
7 our 70 billion dollar debt.

8 But also, not only provide that
9 restructuring tools, one, as a bankruptcy-like
10 process, and the second one in a process very similar
11 to how sovereign nations restructure their debt, but
12 in addition to that restructuring process,
13 restructuring tool, they also imposed an Oversight
14 Board, a Control Board. And this is very important
15 because since it was imposed, the Control Board,
16 which is not elected by the people of Puerto Rico, we
17 have not been in control of our finances.

18 And why is this important? Because when
19 Irma and María both hit, Puerto Rico did not have
20 enough cash in hand to be able to respond to that
21 disaster. In addition to that, we didn't have a rainy-
22 day fund like Texas to be able to respond to Harvey,
23 or we didn't have access to the market as Louisiana
24 and other jurisdictions, that they were able to

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1 borrow money and respond as they waited for the
2 reimbursement process of FEMA. We didn't have those
3 tools.

4 And this is very important because
5 unfortunately the federal administration did not take
6 that into consideration when they were responding to
7 the disaster. The government of Puerto Rico had to
8 depend on the federal response essentially and also
9 on the Oversight Board and the Department of Treasury
10 for the access of funds.

11 To give you an example, during that time
12 we were required -- we were imposed many requirements
13 to access the federal funds. For example, we were
14 required to establish a Centralized Oversight
15 Authority, which is COR3. Not because we wanted
16 additional bureaucracy, but because it was required
17 by the government of the federal government to have
18 that entity. We established that entity. We were also
19 required to have third party experts to help us manage
20 those funds because we didn't have the internal
21 capacity. We did that as well. We were also required
22 to impose internal controls, transparency measures,
23 and we did all that.

24 But it was not until April 2019 that for

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1 the first time after María the government of Puerto
2 Rico had the opportunity to take control of the
3 reimbursement process. I don't know how many of you
4 are familiar with the reimbursement process of FEMA,
5 but every single state and every single territory in
6 the U.S. nation takes control of the reimbursement
7 process and they certify to the FEMA agency that they
8 comply and obviously they have to be responsible for
9 the records, the compliance, the internal controls,
10 and all of that.

11 Unfortunately, in November 2017, the
12 federal administration and FEMA imposed what was
13 called the 270 manual drawdown process. And this is
14 all very important because every single time, as we
15 were approaching or we were trying to comply with
16 these more stringent requirements, the goal post was
17 essentially moved. And this happened. That's why when
18 you look at the process of obligations and
19 disbursements, it was really stringent for the
20 government of Puerto Rico and its recipients to
21 access the funds in a quick manner.

22 Not only that, but as I said, we were
23 every single time trying to reach or trying to come
24 up with solutions to expedite the recovery process,

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1 and it was not until April 2019 that we were able to
2 control the reimbursement process for the first time.
3 Not only that, with the change in administration, we
4 saw how many restrictions that were imposed upon the
5 government of Puerto Rico, they were released. And
6 with that, the pace of federal funds have accelerated
7 in a very visible way, not only in obligations but
8 also in disbursement. And this is not only on the
9 FEMA side, but also on the CDBG and HUD side.

10 So again, we all know about the
11 destruction that was caused by Hurricanes Irma and
12 María. It was the worst-case scenario. The government
13 itself was a casualty to this disaster that obviously
14 was the most complex and the most destructive in 100
15 years for the people of Puerto Rico. And even though
16 we were just demanding to be treated as any other
17 U.S. citizen in the nation, that was not the case.

18 Since day one, after the hurricane, we
19 were required, and we were imposed many stringent
20 requirements that any other U.S. jurisdiction did not
21 face. However, that did not stop the government of
22 Puerto Rico, its municipalities, and many government
23 agencies to try to comply as fast as we could in order
24 to access the funds. But unfortunately, it was until

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1 the end of 2020 that we were seeing the first
2 permanent work to being obligated by FEMA.

3 And also, we have to bear in mind, in the
4 last minutes that I have, that FEMA also used Puerto
5 Rico as a laboratory for new policies. We were
6 required to use Section 428, which was a section added
7 to the Stafford Act with approval of the Sandy
8 Recovery Improvement Act of 2013. It was added in
9 order to provide a more flexible way to address a
10 disaster, but that was not the case in Puerto Rico.
11 FEMA was essentially designing the plane while we
12 were flying it.

13 And with that, essentially many American
14 citizens of Puerto Rico were not -- did not have the
15 ability to have their needs appropriately addressed
16 in a swift manner, even though the government of
17 Puerto Rico, its municipalities, and many agencies
18 did whatever they could in order to comply with the
19 requirements and more stringent conditions imposed by
20 the federal administration.

21 Again, I yield my time, and I'm willing
22 and able to answer any question that this Honorable
23 Commission may have. Thank you.

24 CHAIRWOMAN CANTÚ: Thank you, Secretary

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1 Marrero. You set a wonderful example of being heavy
2 in content and brief in time. So gracias.

3 MR. MARRERO: Thank you. Probably the
4 mayor will improve that.

5 CHAIRWOMAN CANTÚ: Thank you. We will now
6 hear from the Honorable Cruz Soto. Please proceed.

7 MS. CRUZ: Distinguished members of the
8 Commission and fellow panelists, thank you for the
9 opportunity to shine a light on the negligent acts
10 perpetrated by FEMA under the Trump Administration in
11 the aftermath of Hurricanes Irma and María.

12 Approximately 3,000 Puerto Ricans died
13 after a botched relief effort denied us lifesaving
14 support. These deaths could have been prevented if
15 our suffering had been met with urgency and
16 efficiency. Earlier this year, two reports from the
17 Inspector General's Office concluded what we knew,
18 FEMA was unprepared and mismanaged relief efforts.
19 One of the reports stated it took an average of 69
20 days, more than two months, for aid to arrive. On its
21 executive summary, it said, and I quote, "FEMA cannot
22 ensure it provided commodities to Puerto Rico
23 disaster victims as needed to sustain life and
24 alleviate suffering."

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1 Under the veil of political neutrality,
2 FEMA's highest managerial levels turned a blind eye
3 to the unequal treatment that cost so many lives. Two
4 data points paint a clear picture of neglect. Nine
5 days after Hurricane Harvey, there were 30,000 FEMA
6 personnel in Texas. In Puerto Rico, nine days after
7 María, 10,000. It took FEMA 10 days to approve
8 disaster work after Harvey, it took them 43 days to
9 approve the same work in Puerto Rico.

10 FEMA was unable to adapt its standard
11 operating procedures to get their relief operations
12 off the ground on a timely fashion. They kept asking
13 us for reports to be filled out on the Internet when
14 they knew we had no electrical power and thus no
15 Internet. The results show no consistency in the
16 instructions provided to us. One day we were told to
17 use one form or one system, and a few days later we
18 were told to use another form and input the same data
19 on another system. A new FEMA employee arrived, and
20 we had to start again, for there was no handoff, no
21 knowledge of what had happened before, only new
22 instructions.

23 Language was another barrier. Not only
24 was the information initially in English,

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1 disregarding our first language is Spanish, but
2 FEMA's personnel were incapable of servicing the deaf
3 community and did not take into consideration that
4 people have different levels of Internet proficiency
5 and access.

6 And when relief finally arrived, it added
7 insult to injury. I gave you a picture of the food
8 distributed by FEMA about three weeks after the
9 crisis. It's a beef jerky, chocolate pudding, a Baby
10 Ruth, Pringles, and apple sauce. Shameful. Not only
11 was this food not suitable, but FEMA was incapable of
12 setting up or help us set up a robust consistent and
13 adequate supply chain of aid.

14 In the municipality of San Juan at the
15 time, we were prepared to make breakfast, lunch, and
16 dinner for employees for four months. In the end, we
17 provided meals for them, food for 26 community soup
18 kitchens, food, water and emergency managed health
19 for approximately 65 elderly homes and elderly care
20 type organizations.

21 New York City Emergency Management, which
22 arrived just a week after María, established for us
23 a robust distribution system built on the strengths
24 of our relationships with religious communities and

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1 recreational leaders. Thus, we were able to provide
2 food and water consistently to 34 San Juan
3 communities. With the help of Goya, Hispanic
4 Federation, Chobani, Suiza Dairy, Tres Monjitas,
5 Chocolate Cortés, and food and water purchased at the
6 municipal level, we were able to meet local
7 nutritional needs.

8 And I showed you the difference between
9 the photo that we provided and the photo of the food
10 that FEMA said that was food and was provided. We
11 also focused our aid distribution on those living
12 with HIV/AIDS, immigrants, elderly, homeless, those
13 with children or adults with physical and emotional
14 challenges. Where FEMA was incapable, we stepped in.
15 We figured it out. FEMA should have had a road map,
16 a blueprint for how to do this, and precious time
17 would have been saved.

18 Our first aid came from Chicago, from the
19 diaspora. I remember thinking how they could do it
20 when FEMA couldn't do it. The violation of our civil
21 rights had an immediate and lasting effect. Today
22 you'll hear testimony from organizations who have
23 dealt with FEMA's fallout and still are dealing with
24 it. In my written testimony I've included

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1 recommendations on what can be done so FEMA is always
2 prepared to respond. No doubt, treatment was
3 different and devastating.

4 Think about this. Hurricane Harvey
5 impacted 13 million people and 88 people died. Maria
6 affected 3.5 million, and 3,000 people died. One life
7 is not more important than another, but negligence no
8 doubt took a toll. Why the inequity? For those then
9 in power, we're less important because we are
10 colonial subjects, black and brown people, 60 percent
11 below the poverty line.

12 Today, December 10th, the world
13 commemorates Human Rights Day. We have the duality of
14 being United States citizens and Puerto Rican
15 nationals. Two nations where one colonized another.
16 And in 1917 gave us American citizenship by birth.
17 Yes, our civil rights were violated after Maria, but
18 our human rights as a nation, invaded, colonized, and
19 exploited, have been long violated.

20 They were violated while the island of
21 Vieques was used by the U.S. Navy as target practice.
22 Violated while the effects of contraceptives 20 times
23 more potent than those finally approved were tried in
24 Puerto Rican women. Violated today when a Fiscal

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1 Control Board reduces the hopes of our current and
2 future generations by decreasing pensions and
3 increasing the cost of education at the university
4 level.

5 While the violation of our human rights
6 is addressed in other forms, we can move forward and
7 together to ensure what happened in Puerto Rico in
8 2017 does not ever happen again. Never must lives be
9 lost because FEMA or any other agency is incapable of
10 putting action plans into place treating people with
11 urgency, dignity, and respect. Never again must the
12 price of incompetence be the lives of so many.

13 I am hopeful and confident we can move
14 forward in this common endeavor. Thank you very much.

15 CHAIRWOMAN CANTÚ: Thank you, Honorable
16 Cruz Soto. And I am at a loss for words. Already I
17 have heard two of the best speakers I have in my life,
18 so thank you very much.

19 Now we will turn to hear from Ms.
20 Navarro. So please proceed.

21 MS. NAVARRO: Thank you for the
22 opportunity to speak today. I'm particularly humbled
23 at the other panelists, both from the panel I'm on
24 now and the speakers who I know are coming on the

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1 second panel, many of whom are cited in the written
2 version of our comments that we'll be submitting. For
3 the purposes of time, I'm just going to be reading
4 some excerpts from that, and I'll try to skip over
5 things that have already been mentioned by the
6 previous two panelists.

7 It has been more than four years since
8 Hurricane María impacted Puerto Rico. It was an
9 unprecedented emergency that left unimaginable death
10 and destruction in its wake from which we have still
11 not recovered today. The more than 3,000 lives taken
12 too soon, the forced displacement of hundreds of
13 thousands of residents, the ongoing plague of blue
14 tarps on rooftops, the months of schooling the
15 children lost, the long anxious wait for promise help
16 to arrive, and the darkness, the never-ending
17 darkness; there is no doubt that both U.S. federal
18 and Puerto Rico's central governments failed to
19 manage the crisis and protect the people.

20 The federal government response was
21 inefficient, ineffective, and unequitable. This
22 especially when compared to the significant rapid
23 assistance offered by the Trump Administration to
24 Texas after Hurricane Harvey, and Florida after

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1 Hurricane Irma, which hit those states just weeks
2 before Hurricane María. Their Puerto Rico response
3 was hampered from the outset by a lack of familiarity
4 and sensitivity to cultural norms, structures of
5 local government and institutions, the unique legal
6 framework here, language barriers, and geography.

7 This lack of familiarity and sensitivity
8 coupled with their opaque bureaucratic and rigid
9 processes, their centralization, discriminatory
10 political interference by the previous
11 administration, and unique administrative barriers
12 imposed on Puerto Rico undermined recovery efforts by
13 FEMA and other federal agencies. Hurricane María was
14 neither the first nor last disaster in Puerto Rico.

15 Just since 2017, Puerto Rico has
16 experienced two hurricanes, Irma and María,
17 devastating earthquakes, tropical storms, more
18 flooding, suffocating austerity, and the ongoing
19 global pandemic among other challenges. These
20 disasters have laid bare the archipelago's complex
21 economic, social, political, and environmental
22 vulnerabilities. Over the last decade, Puerto Rico
23 has experienced a consistent poverty rate of over 40
24 percent, an average unemployment rate over 11

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1 percent, the lowest median income of any U.S. state
2 or territory, tightening austerity measures, and a
3 dramatic 11.8 percent decline in population.

4 However, this situation was unsurprising
5 as it is firmly rooted in more than 100 years of
6 discriminatory policies and an unjust balance of
7 power between the federal government and the people
8 of Puerto Rico. This historic context and precarious
9 conditions must be fully accounted for when
10 evaluating what a just equitable and sustainable
11 emergency response and recovery to Hurricane María
12 should have been.

13 Hispanic Federation is a 30-year-old
14 nonprofit organization. And immediately after
15 Hurricane María, we began one of the largest private
16 emergency relief and sustainable recovery efforts in
17 Puerto Rico. To date, HF has raised and invested more
18 than \$42 million in private funding into the recovery
19 of the archipelago and with those funds we have
20 provided grants to more than 130 local nonprofit
21 organizations and executed multiple large-scale
22 initiatives.

23 This included chartering the first --
24 that we know, the first humanitarian private relief

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1 flight on September 23rd, which brought the emergency
2 personnel from New York City that the mayor is
3 mentioning. That was the first of 25 humanitarian
4 flights chartered by Hispanic Federation. We reached
5 all 78 municipalities with an estimated 7.4 million
6 pounds of food, water, and other emergency supplies.

7 Simultaneous to our response here in
8 Puerto Rico, we were also working with our networks
9 to support the displaced community in this state and
10 the various states across the U.S. where they were
11 resettling. In particular, the ongoing relationships
12 that we have built with a diverse network of Puerto
13 Rico based nonprofits has been foundational to our
14 impact. It has long been clear to us that the unsung
15 heroes and first responders of the hurricane relief
16 and recovery efforts are Puerto Rico's nonprofit
17 organizations, grassroots community leaders, and
18 mutual aid networks.

19 We witnessed this firsthand after the
20 hurricane, again after the earthquakes, and most
21 recently during the COVID-19 pandemic. However,
22 neither FEMA nor the Puerto Rico government has fully
23 acknowledged and integrated these groups into
24 emergency relief efforts, nor have they been fully

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1 remunerated for the work they completed that was the
2 responsibility of the government. FEMA and the Puerto
3 Rico government have at times shrugged responsibility
4 and suggested it's the households' responsibility,
5 not theirs, to adequately prepare for and recover
6 from a disaster, including evacuating, fortifying
7 homes, storing food and water reserves to last
8 multiple days, and then looking to home insurance
9 savings and loans to get back on their feet.

10 And that may be a reasonable expectation
11 for the average U.S. household, however for families
12 who live in poverty, rely on public food benefits, or
13 live on limited fixed incomes, as so many in Puerto
14 Rico do, there's no money left over to buy extra food
15 reserves, to easily evacuate a community or an island
16 before or after disaster, or to obtain that
17 insurance, those savings, or those loans to help
18 finance a quick recovery.

19 The mayor has already gone into the
20 problems with the emergency supply distribution. We
21 question why it took so long to bring supplies when
22 airports were open just days after. We know because
23 we were sending airplanes to Puerto Rico with food,
24 the food that's been investigated, how nutritiously

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1 deficient the food was, and how it promoted dangerous
2 levels of salt and sugar intake. Again, when
3 considering equity and a disaster relief, you have to
4 consider the health of people. We know that there is
5 a deep connection between poverty and health
6 outcomes, and yet they were sending candy and calling
7 it meals.

8 In addition, if we look to our individual
9 assistance for housing, there we see the language
10 access issues that were mentioned when you have
11 inspectors who spoke no Spanish and knew nothing
12 about Puerto Rico. Another major issue that I'm sure
13 will be discussed later was how many families were
14 denied on the basis of home ownership when it's not
15 even a requirement that they provide a title in the
16 Stafford Act. And yet, FEMA did nothing to
17 communicate with the families who had been unjustly
18 denied despite being asked by advocates repeatedly to
19 do so.

20 When we think about, again, comparisons,
21 we can also look to the fact that in Harvey, families
22 got an average of \$6,980 in Texas, and in Puerto Rico
23 less than \$3,000. The Transitional Sheltering
24 Assistance Program in the United States for families

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1 staying in hotels also lacked language access and
2 appropriate services. When we look at public
3 assistance, when we look at mitigation, all of those
4 programs also require the applicants to speak English
5 and apply in English.

6 But egregiously for us is the lack of
7 data transparency. And in one example I want to share
8 before I close, the fact that one of our nonprofit
9 agencies that we work with requested data from FEMA
10 to be able to provide support to individuals with
11 disabilities, it took nine months to receive that
12 data. And we know that those were the communities
13 that were most vulnerable here and who lost their
14 lives. Had they been provided that data and that
15 collaboration, many lives may have been saved. Thank
16 you.

17 CHAIRWOMAN CANTÚ: Thank you. Perfect. Ms.
18 Navarro, I'm speechless. Perfect.

19 I now call on Mr. Marxuach. We will hear
20 from you. Please proceed.

21 MR. MARXUACH: Good morning,
22 distinguished members of the U.S. Commission of Civil
23 Rights, fellow witnesses, and all those who are
24 following these proceedings. We at the Center for a

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1 New Economy believe it is important to bear witness
2 about the way Hurricane María victims were mistreated
3 by some agencies of the federal government. It is a
4 moral obligation we owe to those who suffered in the
5 immediate aftermath of the 2017 storms, to those who
6 are still living with the consequences, and to people
7 who unfortunately in the future will become victims
8 of natural disasters.

9 I have submitted the full version of my
10 statement for the record, so this morning I will use
11 my allotted time briefly to highlight some of the
12 ways both FEMA and the Department of Housing and Urban
13 Development have treated Puerto Rico unfairly in the
14 reconstruction process. With respect to FEMA, I would
15 like to underscore a point made by Secretary Marrero.
16 An amendment to the presidential disaster declaration
17 for Hurricane María dated November 2, 2017, required
18 FEMA to obligate all large-scale project funding for
19 public assistant permanent work for Puerto Rico
20 through alternative procedures.

21 Under these procedures, FEMA and Puerto
22 Rico had to agree to a fixed cost estimate for each
23 project related to permanent works. We're talking
24 about thousands of projects prior to the obligation

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1 of funds. According to the GAO, no state or territory
2 had ever been required to use these alternative
3 procedures for 100 percent of their permanent work
4 projects after a natural disaster.

5 Given the magnitude of the damage caused
6 by Hurricane María, it was foreseeable that the use
7 of these alternative procedures will present
8 implementation challenges and delays in developing
9 fixed cost estimates basically because Puerto Rico
10 was responsible for any cost that exceeded those
11 fixed cost estimates.

12 Under the alternative procedures, FEMA
13 and Puerto Rico had to agree on the appropriate
14 guidance to develop those estimates. It was not until
15 February 2020 that the GAO reported that FEMA had
16 developed guidance for developing those fixed costs.
17 However, it also found that the guidance did not meet
18 all of the GAOs best practices for estimating costs
19 and the GAO recommended that FEMA revise the guidance
20 to adhere more closely to best practices.

21 To be fair to FEMA, since 2017 it has
22 implemented -- since 2019, I'm sorry, it has
23 implemented several changes to its public assistance
24 program in Puerto Rico. We have expedited the

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1 obligation of funds according to the GAO. As of
2 January 15, 2021, FEMA has obligated 17.5 billion for
3 4,793 public assistant permanent work projects.
4 However, the actual expenditure of funds remains
5 painfully slow. According to this same GAO report, of
6 the 17.5 billion obligated for permanent work
7 projects, only 157.7 million, or less than 1 percent,
8 had been spent as of January 15, 2021.

9 Finally, we note that as of January 2021, more
10 than three years after Hurricane María, FEMA was
11 still developing cost estimates for 5,279 projects
12 related to the 2017 hurricanes. With respect to HUD,
13 between September 20, 2017, and June 2019, Congress
14 appropriated approximately \$20.3 billion in community
15 development block grant disaster recovery funds and
16 mitigation funds for disaster reconstruction and
17 mitigation activities related to Hurricanes Irma and
18 María in Puerto Rico.

19 The usual process for disbursing these
20 funds is somewhat cumbersome. As shown in Exhibit C
21 to my written statement, after Congress appropriated
22 the money, OMB issues an apportionment document to
23 HUD and then HUD has to publish a notification in the
24 Federal Register. The intended beneficiary then

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1 proceeds to draft an action plan for the use of funds
2 in accordance with the published regulations. If and
3 when the action plan is approved by HUD, then the
4 parties need to execute a grant agreement to allow
5 the expenditure of funds. However, as shown in
6 Exhibit D to my statement, this process has been
7 particularly, some would say suspiciously slow in the
8 case of funds allocated for mitigation activities in
9 Puerto Rico.

10 Indeed, a report issued by HUD's Office
11 of Inspector General on April 20, 2021, found that
12 the Trump Administration set up several bureaucratic
13 obstacles that substantially slowed down the process
14 for disbursing these funds. With respect to the
15 Federal Register notice for the use of \$8.3 billion
16 for mitigation activities, the OIG report described
17 months of negotiations between HUD and OMB which
18 resulted in several revisions to the notice text,
19 mostly at the request of OMB.

20 Several HUD officials found some of these
21 OMB requests to be unreasonable or outside the scope
22 of normal administrative procedure. For example,
23 Deputy Secretary Montgomery, during his OIG
24 interview, characterized OMB's revisions as

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1 containing "poison pills" because they would impose
2 unworkable criteria, and he was not sure it was even
3 "legal" to insist upon meeting these conditions.

4 Furthermore, OMB requested the Office of
5 Information and Regulatory Affairs to review the
6 proposed Federal Register notice, which a HUD
7 attorney described as "unheard of" for a disaster
8 related notice. Another HUD official described OIRA's
9 comments as "kind of like Groundhog Day," it just
10 keeps coming back.

11 The net result of loading the Federal
12 Register notice with poison pills and submitting it
13 into unnecessary administrative review was that the
14 mitigation notice for Puerto Rico was not filed until
15 January 27, 2020, 23 months and 19 days after the
16 corresponding appropriation and 146 days after the
17 statutory deadline. In contrast, HUD published a
18 notice for the other 14 CDBG-MIT grantees 150 days
19 earlier on August 30, 2019, and a notice for USVI 139
20 earlier.

21 While all the circumstantial evidence
22 points to undue OMB interference as the principal
23 cause of the delays regarding the disbursement of
24 CDBG funds for Puerto Rico, the OIG reports fell short

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1 of doing so, perhaps because formal OMB officials
2 refused to cooperate with the investigation while OMB
3 itself denied requests for information made by Office
4 of Inspector General.

5 Nonetheless, former OMB head and then
6 acting chief of staff, Mick Mulvaney, said the prior
7 part aloud, when on an October 17, 2019 press
8 conference regarding the Trump Administration's
9 withholding of military aid to the Ukraine, he stated
10 that we needed to put this in context. This is on the
11 heels of what happened in Puerto Rico, when we took
12 a lot of heat for not wanting to give a bunch of aid
13 to Puerto Rico because we thought that place was
14 corrupt.

15 This statement is problematic in several
16 ways, but I would just like to highlight that no
17 Puerto Rican official, no Puerto Rican government
18 official has been indicted, much less convicted of
19 any malfeasance regarding the expenditure of federal
20 disaster assistance funds with relation to Hurricane
21 María.

22 Nearly four years and three months after
23 Hurricane María, the totality of the circumstances
24 surrounding the federal government's response to the

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1 natural disaster strongly suggests that it was
2 arbitrary and capricious, and that Puerto Rico was
3 unreasonably treated in a different way relative to
4 other jurisdictions affected by the 2017 disasters.
5 Thank you very much for your time.

6 CHAIRWOMAN CANTÚ: Thank you, Mr.
7 Marxuach. Very, very good. We will now hear from Ms.
8 Miranda.

9 MS. MIRANDA: Buenos días. I'm honored to
10 be here today, and I will read a short version of my
11 statement, a longer version has been filed on record.

12 While over four years have passed since
13 María, our reconstruction and recovery process seem
14 to be stagnant. Hurricane María's force was extremely
15 destructive and so has been the response. It
16 sometimes feels as if we are still under the heavy
17 winds of María and only have paper towels thrown to
18 us as support.

19 I want to start by establishing the
20 context that led to the disaster caused by Hurricane
21 María. Disasters are caused or amplified by our
22 existing social context, vulnerability, poverty, and
23 inequality affect our adaptive capacity and our
24 ability to deal with this phenomenon. María was a

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1 socioeconomic and a natural disaster. The lack of
2 understanding that there are communities that are
3 more vulnerable, poorer, and therefore with less
4 capacity to react, recover, and adapt is in part what
5 has perpetuated the inequity in the recovery process
6 in Puerto Rico.

7 Let's look at some important points about
8 the recovery process. Hurricane María, or the lack of
9 preparation for it, and the state of our
10 infrastructure killed more than 4,600 people in
11 Puerto Rico, 70 times the official toll according to
12 estimates in a Harvard University study. Neither the
13 federal government nor the Puerto Rico government
14 were prepared for the magnitude of the disaster.

15 As an example of this, the Harvard study
16 found that a third of deaths after the hurricane were
17 due to interruptions in medical care caused by power
18 cuts and broken road lanes. As the mayor stated, a
19 report published on September 25, 2020 by the Office
20 of the Inspector General of the Department of
21 Homeland Security confirmed what we all knew -- that
22 the federal government was unprepared for the
23 management of the disaster. Let that sink in.

24 When it comes to spending, and aware that

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1 we prefer in La Liga is investing, the reality is not
2 better. Recent reports established that only 1
3 percent of the funds have been disbursed for
4 permanent work projects. Other reports state that
5 only 18 percent of the overall approved FEMA funds
6 have been disbursed. How, one may wonder, with so
7 much need and with the available resources can we be
8 so behind in our reconstruction process?

9 FEMA's delay in damage inspections, too
10 many changes, or a lack of staff from COR3 and FEMA,
11 and confusion over federal processes, have caused
12 this unforgivable man-made delay. To this we must add
13 of course the impact that the unilateral and ill-
14 informed measures imposed by the Fiscal Control Board
15 has caused municipalities. Further complicating the
16 reconstruction process is the fact that FEMA funds
17 must be reimbursed.

18 As stated before, municipalities are
19 facing a multiplicity of constraints imposed
20 unilaterally by the Fiscal Control Board as well as
21 the central government. Municipal budgets are facing
22 drastic reductions while the need of their
23 constituents increase. As an example, from 2015 to
24 2018, municipal budgets reported a reduction of

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1 almost 15 percent. It is expected that by fiscal year
2 2023-2024, 43 municipalities in Puerto Rico will be
3 fiscally unviable.

4 If funds must be spent to be reimbursed
5 but the available funds are extremely limited,
6 municipalities must be strategic in how to invest
7 their reduced resources -- a task that would be easier
8 to manage if the reimbursement process was not as
9 slow as it is. It is important to note that funds
10 that were directly allocated to local government,
11 funds A and B, were promptly disbursed and used. That
12 evidence that local units of government can be more
13 agile than the central government. We all know that
14 there is widespread discomfort with the management of
15 the FEMA funds by the central government,
16 specifically with the company contracted by COR3 ICF
17 Incorporated.

18 As an example, the mayor of Jayuya, the
19 municipality with the most FEMA funds allocated,
20 recently stated, and I quote, "These people, ICF
21 Incorporated, do not work. And if they work, they
22 change their minds and instructions every day." While
23 we are here to talk about Puerto Rico, it is important
24 to share that companies such as ICF have had previous

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1 allegations of breach of contracts at the federal
2 level, and that should be studied.

3 In the case of Puerto Rico, it is
4 important to note that since 2018, ICF has signed
5 contracts with COR3 that surpassed the sum of \$406
6 million, in part to advise and give administrative
7 consultancy to the municipalities and government
8 agencies to obtain funds. The complaints expressed by
9 the mayor of Jayuya are shared and amplified by other
10 mayors that have stated that they face similar
11 obstacles with ICF and with the burdensome and
12 bureaucratic process established by the COR3.

13 It almost feels as if there were
14 remaining winds from María impeding the recovery. To
15 these obstacles we must add the dramatic increase in
16 material costs, the absence of labor, the losses
17 related to the lack of compliance from insurance
18 companies, the compounding effects of other
19 disasters, and of course the pandemic. All of this is
20 further complicated by the delays caused by the COR3
21 in the approval of documentation previously approved
22 by FEMA.

23 It is also important to note that Section
24 428 of the Stafford Act establishes that if costs

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1 increase after estimates are approved, municipal
2 governments are responsible for the extra expenses.
3 It does not mention anything about assigning
4 responsibilities for the delays that lead to
5 increases in construction costs.

6 But there is more impeding the recovery
7 process, and this is an incapacity to understand the
8 consequences of decisions made at the central
9 government. An example of this is the adoption by the
10 central government of the advisory maps completed by
11 FEMA. These maps, these advisory maps, are incorrect,
12 misleading, and dangerous. They do not consider
13 previous mitigation projects funded with federal
14 funds, and they also exclude many potential
15 beneficiaries by identifying many communities as
16 being in a flood plain. This is particularly
17 impactful for many disadvantaged and economically
18 disenfranchised communities who will not be able to
19 receive the required funding, thus ending in
20 displacement.

21 We have a set of recommendations to deter
22 the violation of our civil rights, they're in our
23 reading statements, but I will read three of them
24 that I think are instrumental. The first one is to

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1 communicate to the central government that FEMA's
2 advisory maps are precisely that, advisory, and that
3 this should not be adopted without the proper
4 confirmation of their correctness. The second one is
5 to complete an assessment about disparity in
6 regulations to access funds imposed by our own
7 government and that have a negative impact on the
8 most disadvantaged and at need communities. And the
9 third one that I'm going to be sharing here is to
10 complete an assessment on the impact of the federal
11 impositions that are focused on formalized
12 communities and that do not adapt to the legal
13 framework or the reality of Puerto Rico.

14 Time constraints do not allow me to delve
15 into the topics that I have brought up here in a
16 general way, but we are hopeful about this public
17 briefing, hopeful that it will result not only in the
18 identification of all the things that have gone
19 wrong, but in actions to correct them and to prevent
20 them from ever happening again. Thank you.

21 CHAIRWOMAN CANTÚ: Thank you, Ms. Miranda.
22 Mr. Padilla Ruiz, we will now hear from you. Please
23 proceed.

24 MR. PADILLA: Ms. Chair and distinguished

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1 Commissioners, I'm going to be presenting in Spanish,
2 so you can put on your equipment.

3 ***Testimony available on page 173.***

4 Thank you so much.

5 CHAIRWOMAN CANTÚ: Thank you, Mr. Padilla

6 Ruiz. And now we will hear from our final panelist
7 for panel 1, Ms. Yentel.

8 MS. YENTEL: Thank you for the opportunity
9 to testify. At the National Low Income Housing
10 Coalition, we have been working on disaster housing
11 recovery for over 15 years, and from those
12 experiences have come to a simple conclusion:
13 America's disaster housing recovery system is
14 fundamentally broken and in need of major repair and
15 reform. The system fails to address the unique needs
16 of the lowest income and most marginalized people,
17 consistently leaves them behind in disasters, and
18 often worsens many of the challenges that low-income
19 people faced prior to the storm.

20 This inequitable disaster recovery was
21 exemplified by the response to Hurricane María.
22 FEMA's response in Puerto Rico was flawed in many
23 ways. My focus and the focus of the National Income
24 Housing Coalition is on the response to housing

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1 needs. A primary challenge was FEMA's refusal to
2 utilize proven programs to address housing needs.

3 After Hurricane María, FEMA relied
4 heavily on the Temporary Shelter Assistance program,
5 TSA, which temporarily puts people up in hotels. Low-
6 income families are often unable to access TSA motels
7 due to financial and other barriers, including the
8 practice of motels charging daily resort fees and
9 requiring security deposits or credit cards at check-
10 in. Because TSA must be renewed every 14 days,
11 disaster survivors who do access the program face
12 regular arbitrary deadlines that require them to
13 resubmit paperwork or leave the motel before finding
14 a permanent housing solution.

15 The Trump Administration abruptly
16 terminated the TSA program for nearly 2,000 Puerto
17 Rican families displaced to the continental U.S. and
18 refused to activate the Disaster Housing Assistance
19 Program, which would have provided them with longer
20 term direct rental assistance and case management
21 services. Many disaster survivors became homeless as
22 a result.

23 In states with large numbers of displaced
24 Puerto Rican survivors, homelessness increased by 14

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1 percent in Massachusetts, by 17 percent in
2 Connecticut. This is a pattern seen again and again
3 after disasters in recent years, including after
4 Hurricane Harvey, where one year after the storm,
5 homelessness had increased by 18 percent with 20
6 percent of those newly homeless attributing their
7 housing loss to the disaster, a clear example of
8 FEMA's extraordinary failure to meet the housing
9 needs of disaster survivors.

10 FEMA has a systemic lack of transparency
11 and a convoluted application process. FEMA
12 consistently refuses to clarify or make public
13 important information about its aid application
14 process, making it difficult to determine who is
15 eligible to receive assistance and why assistance is
16 denied. This leads to higher denial rates for low-
17 income disaster survivors. A full 60 percent of
18 applicants were denied individual assistance after
19 Hurricane María, and many disaster survivors with the
20 lowest incomes don't apply for assistance at all
21 despite their need.

22 FEMA failed to address title
23 documentation issues and denied survivors assistance
24 to which they were entitled. After Hurricane María,

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1 FEMA denied assistance to at least 77,000 survivors
2 due to a lack of property title. This followed a
3 similar pattern after disasters in the continental
4 U.S. for decades. FEMA has been aware, since at least
5 1995, of this challenge and the harm it does to low-
6 income and marginalized communities, but until very
7 recently has done nothing to address it.

8 After María, NLIHC and partners like
9 Ayuda Legal and El Fondo engaged with FEMA to create
10 a sworn statement allowing those without title
11 documents to prove ownership. And still FEMA refused
12 to notify survivors of the new form or make the
13 statement available online. The Biden
14 Administration's FEMA recently made substantial and
15 long overdue improvements to this process, but more
16 action is needed. FEMA must now allow survivors in
17 Puerto Rico and across the nation who were previously
18 denied by FEMA the opportunity to reopen their cases
19 to access the assistance to which they are entitled.

20 After FEMA's inadequate response to
21 Hurricane María, HUD delayed assistance to Puerto
22 Rico and failed to provide oversight to ensure that
23 funds were being distributed equitably. It took six
24 months for Congress to approve money for Puerto

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1 Rico's recovery and more than two years for HUD to
2 fully allocate disaster mitigation funds. When HUD
3 resources do arrive after disasters, recovery and
4 mitigation efforts consistently favor higher income
5 communities at the expense of low-income communities
6 and communities of color, which are often located in
7 areas at higher risk of disaster with less resilient
8 infrastructure.

9 In Puerto Rico, long term recovery funds
10 are provided only to those able to ensure their homes
11 will comply with flood protection standards. But the
12 recovery program doesn't help lower income disaster
13 survivors to implement any mitigation measures, nor
14 does it ensure that low-income residents are served
15 by mitigation projects.

16 As we work towards a complete overhaul of
17 disaster housing recovery to center the housing needs
18 of the lowest income and most marginalized survivors,
19 including people of color, people experiencing
20 homelessness, people with disabilities, and others,
21 there are immediate steps that Congress should take
22 to improve the process, including permanently
23 authorizing the Disaster Housing Assistance Program
24 and automatically activating it after major disasters

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1 to provide longer term housing assistance and wrap
2 around services to low-income survivors; permanently
3 authorizing the CDBG-DR program and including
4 essential protections and assurances of equitable
5 distribution and public participation; enacting the
6 Housing Survivors of Major Disasters Act to allow
7 Puerto Ricans to reopen their denied cases and
8 receive the FEMA assistance they are entitled to;
9 requiring that FEMA provide basic essential
10 information about federal disaster response and
11 recovery efforts, including eligibility, the
12 application process, and reasons for denial; and
13 requiring FEMA to provide categorical eligibility,
14 simplify the application and appeals process, and
15 track and report on outcomes and demographics to
16 ensure recovery aid reaches those in need.

17 Thank you again for the opportunity to
18 testify. I look forward to your questions.

19 MADAM CHAIRWOMAN CANTÚ: Thank you, Ms.
20 Yentel. Everyone was wonderful, on time, and now we
21 are turning to the place in this agenda where we will
22 accept questions from the Commissioners. We'll start
23 with the people in person. Would a Commissioner in
24 person like to ask any questions directed to the

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1 panel?

2 Commissioner Yaki.

3 COMMISSIONER YAKI: Thank you so much,
4 Madam Chair. In every disaster there's the response
5 and the recovery. I want to focus on that response
6 right now because -- I think the response is related
7 to this. From your experience, I'm going ask -- start
8 with Madam Cruz Soto first and then everyone else can
9 chip in.

10 But from your experience on the ground at
11 the time, why was aid so late and the forms of aid
12 that you received so inappropriate to what you
13 believed your needs really were?

14 MS. CRUZ: I've been asked this question
15 many times in the past years. And it took me a long
16 time to even utter the response, and I think the
17 Secretary of State and Mr. Padilla referred to it.
18 We are a colony of the United States, black and brown
19 people, poor; 60 percent of our people are poor. And
20 simply our lives did not matter to the people that
21 headed the U.S. at the time.

22 The problem is that this shouldn't matter
23 on who is the president and whether they know Puerto
24 Rico, they like Puerto Rico or not. You don't -- a

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1 slave is a slave. It doesn't stop being a slave
2 because his or her master gives her three meals a day
3 and doesn't beat them on a daily basis. So, what
4 really happened is -- we have to remember; the Trump
5 administration was -- this was very early on. And
6 there was a narrative from the Pentagon, from the
7 White House, from FEMA federal officials to position
8 Puerto Rico -- and this was the "el titular," the
9 headline, as a good news story. But the world was
10 here. I denounced it.

11 I have to say that I was politically
12 bashed by the opposition, here in Puerto Rico and in
13 the United States, because they said I was making
14 this up. But really what happened is that Puerto
15 Rico's response became a blemish in the Trump
16 administration worldwide. And then rather than
17 making it better they made it worse. There have been
18 reports saying that -- not only in the Inspector
19 General reports and OMB report that not only did the
20 federal government did not give us the aid but they
21 covered it up.

22 COMMISSIONER YAKI: We heard about the
23 water bottles that never made it to Puerto Rico, that
24 were sitting on the tarmac somewhere else, and --

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1 MS. CRUZ: There was that. There was
2 that FEMA admitted paying a company in Florida about
3 \$50 million for food that never got to Puerto Rico
4 and then they rescinded the contract. I also
5 remember, and the Hispanic Federation has to remember
6 this, that there were no tarps in Puerto Rico. It
7 took them, again, a long time, 69 days, says the
8 Inspector General. But this is the truth. When
9 you have several crises, that is, at the same time,
10 Harvey, Florida, and Puerto Rico, you choose to treat
11 faster and quicker those that you consider your own.
12 And I have to say this, and I say this -- look, every
13 day I wake up and we wake up and we think 3,000 Puerto
14 Ricans or more did not open their eyes. We saw them.
15 I saw them gasping for air, people without dialysis,
16 people without chemotherapy, children that looked up
17 at a bottle of water and just wanted to reach out to
18 you because you had a bottle of water six months old.
19 So, we saw this and I think mayors of all parties in
20 Puerto Rico saw this.

21 But it is, and I don't want to politicize
22 this, but it has to do with our colonial -- we are
23 colonial subjects. So, our lives matter less. And
24 on top of that, we're black and brown. And on top of

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1 that, we're poor.

2 And we have to thank the diaspora,
3 Chicago, Holyoke, Massachusetts, New York City. I
4 remember going into New York City and seeing this
5 entire place filled with different services. And the
6 one that struck me the most, Mr. Yaki, was the place
7 that contained the little coats for little children,
8 six months old. So, I am convinced -- and believe
9 me, it took me a very long time to be convinced of
10 this, because you don't ever want to be convinced
11 that your life does not matter just because you're
12 politically a subject of another country that has
13 colonized you.

14 And I've great respect for the American
15 people, because where the American government failed
16 us, the American people and the diaspora, "los
17 puertorriqueños," and the diaspora really took care
18 of us. They fed us. They gave us water. They took
19 care of our wounds. They held us in their arms and
20 said, "We care." AFL-CIO workers, 324 AFL-CIO workers
21 took vacation and were brought to San Juan to help,
22 not only San Juan, but some 37 other towns around
23 Puerto Rico.

24 So, I am convinced that it had to do with

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1 the disdain that the then president had. The problem
2 is that this is systematic and structured. So, we
3 cannot depend on another president being amiable to
4 Puerto Rico. The systematic oppression and racism
5 that being a colony gives us has to end. Whether the
6 people of Puerto Rico want statehood, whether they
7 want independence, whether they want an enhanced
8 Commonwealth, or whether they want free association.
9 We must be allowed as a nation that we are -- because
10 we are a nation, we're not colonial subjects that --
11 "Puerto Rico es una nación." We are a nation, and we
12 must be allowed to decide the next chapter of our
13 lives with the United States. I have my preference,
14 but I've always spoken more about a process of self-
15 determination than about the end of that process.

16 COMMISSIONER YAKI: Thank you.

17 MR. PADILLA: Commissioner Yaki?

18 COMMISSIONER YAKI: Yes.

19 MR. PADILLA: This is an issue about
20 political representation. This is about an issue
21 about power. This is about -- this is an issue about
22 the situation that has been managed by Congress and
23 doing nothing for the last 120 years. That's why we
24 urge Congress to address the political issue of

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1 Puerto Rico in order to let us fulfill our civil and
2 human rights.

3 COMMISSIONER YAKI: Anybody else? I see
4 lots of you.

5 MS. GOSSETT: So, I want to echo what's
6 been said for sure. And actually, The New York Times
7 recently had an article talking about not just the
8 biases in wealth that are part of FEMA but also the
9 racial biases that the data is clearly showing across
10 FEMA services. So, there's reports and evidence to
11 back up what's being said.

12 There are also major logistical
13 challenges in terms of -- I mentioned earlier, they
14 claimed, "Oh, we shipped everything. Everything took
15 too long. We shipped it". Airports were open. The
16 very week afterwards, regional airports were open.
17 And if there was a will to get stuff here and if they
18 had taken into account our geography instead of just
19 shipping things and waiting for it to get here,
20 working with contractors as they mentioned -- that
21 same OIG report shows they lost site. They didn't
22 use their GPS tracking, and so there were major
23 problems in the logistics of what they sent.

24 You mentioned the water bottles. It

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1 wasn't just water bottles; it was 20,000 pallets of
2 water bottles that were delivered in March and then
3 not found until September. In March they were calling
4 it a surplus. In March we were still distributing
5 water filters to people who had no potable water in
6 their communities, so the need was still there. Why
7 was it sitting on that tarmac? I don't know.

8 There are major problems in their
9 contracting. I mentioned it was actually 156-
10 million-dollar contract that went to a woman in
11 Florida who had already canceled contracts with the
12 government, multiple cancelled contracts. Yet they
13 gave her that contract to provide food. Meanwhile,
14 again, if you look at the comparison in the amount of
15 food that arrived to Puerto Rico nine days later,
16 versus Harvey, I think it was 5 million meals
17 delivered to Texas a little over 1 million to Puerto
18 Rico in the same time period. And they're hiring
19 failed contractors. The same could be said if
20 you look at contracting, you want to look at
21 discrimination. Actually, we've cited in our report,
22 and I didn't get to it, in our summary, we have done
23 an excellent job of tracking those contracts. And
24 although the Stafford Act requires that there be

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1 preference given to contractors from the impacted
2 area, that is the law, it's in the Code of
3 Regulations, FEMA, one year after, had only
4 contracted -- 8 percent of their contracts had gone
5 to local companies.

6 The reason we were able to distribute
7 food to all 78 municipalities -- we reached 60 in
8 less than two months despite the fact that at the
9 time we had no on the ground office here. That didn't
10 happen until January. Small nonprofit able to reach
11 all 60 municipalities, 78 within a few months after
12 that, was because we contracted with local
13 distributors after we saw the backlog of containers
14 and shipping containers and saw that that strategy
15 wasn't going to work.

16 Unlike FEMA, who is incredibly
17 bureaucratic in making decisions, we immediately
18 switched strategies and discovered that the
19 distributors here in Puerto Rico had -- their
20 warehouses actually were full of food, and they had
21 trucks full of gas that could do deliveries. So, we
22 made calls, made payments, and one to two days later
23 were able to send pallets of food to all of the
24 municipalities as soon as we found a mayor or a

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1 contract to send them there.

2 Had they, instead of giving preference
3 and looking to these contracts in the U.S. and making
4 these quick and rash decisions for failed
5 contractors, which also happened with the tarps --
6 that was a 30 million contract given to a tiny company
7 in Florida ran by two brothers who had never dealt
8 with tarps ever, or even managed a federal contract,
9 got a contract to provide tarps that they never
10 provided to Puerto Rico.

11 If instead FEMA had focused on, one, some
12 of the strengths that are here in Puerto Rico, focused
13 on supporting the local economy, here in Puerto Rico,
14 and finding those here who could help, we could have
15 moved things a lot faster as well. So, I think there
16 were a multitude echoing what was already said,
17 adding to that these types of issues.

18 MR. MARXUACH: Just a brief comment. I
19 don't know why this came to mind listening to Mayor
20 Cruz Soto. I really want to highlight what I think
21 is the fundamental issue here. And what came to mind
22 was a quote from President Kennedy, that he gave a
23 speech on June 1963 when George Wallace was standing
24 at the door of the University of Alabama to prevent

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1 African American students from registering to study
2 at the University of Alabama.

3 And President Kennedy, if I remember
4 correctly, said in that speech that the issue that
5 was facing the nation back then, and I think it's
6 appropriate here in Puerto Rico right now, "Is as old
7 as the Scriptures and is as clear as the U.S.
8 Constitution," it's whether we are willing to treat
9 our fellow citizens with the same rights and the same
10 equal protection under the law.

11 It's whether we're willing to treat our
12 fellow human beings as we would like to be treated.
13 In the case of Hurricane María, as a Puerto Rican, as
14 a U.S. citizen, as a human being, I certainly will
15 not like anybody to be treated the way we were
16 treated.

17 MS. MIRANDA: If I may add, I agree with
18 everything that's been said. I do want to add that
19 we are a colony. It's something that we know, but
20 it's important to also understand that if Puerto Rico
21 is a colony, municipalities are the colony within the
22 colonies. So, that's very important to also take
23 into consideration. I think there's a lot of causes
24 to what happened.

25

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1 I think the first one is a lot of
2 political will. There's a lack of political will at
3 the federal government. There's a lack of knowledge
4 in terms of who we are, what we mean as a country,
5 our distance, etcetera. There's also a metrocentric
6 approach to distribution of resources. It's sort of
7 like Puerto Rico is only the metropolitan area. As
8 an example, our central government invests 70 percent
9 of our budget in five municipalities, where only 25
10 percent of our population resides. So, that's
11 something to take into consideration. And
12 there's also a narrative -- I mean, competence and
13 corruption that does not take into consideration the
14 role of the federal government. That report from
15 FEMA that says that FEMA lost 38 percent of the goods
16 that were coming to Puerto Rico at a cost of \$257
17 million, if that had happened in Puerto Rico, we would
18 have not stopped hearing about it, right?

19 So, anything that happens over there is sort of
20 like, you know, hidden under the rug, and anything
21 that happens here is magnified, but without the
22 analysis of the context of how it happens. So, I
23 think that my response is shorter, they just don't
24 care about Puerto Rico. It's as simple as that. We

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1 don't have to give a lot of introductions. Everybody
2 knows we're a colony. The Supreme Court has said it
3 firmly and it's just a reality that we're just here.
4 We're an island. We were occupied. We were invaded
5 and that's it. There's just -- they don't care.
6 That's it.

7 CHAIRWOMAN CANTÚ: Commissioner
8 Adegbile?

9 COMMISSIONER ADEGBILE: Madam Chair, I
10 believe the Secretary of State had a response.

11 CHAIRWOMAN CANTÚ: Thank you.

12 MR. MARRERO: Thank you, Commissioner.
13 Just a brief remark.

14 As I said in my intervention, what we
15 requested in every single stage during the response
16 was just equal treatment. We requested that we were
17 just given a chance as every other jurisdiction in
18 order to manage the process and respond our people in
19 a swift manner. As many of the panelists said, yes,
20 I believe that the biases that they had against the
21 people of Puerto Rico had an effect, also the
22 bureaucracy of FEMA, and from a science of delivery
23 perspective, also the lack of internal capacity of
24 FEMA to manage several disasters across the nation.

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1 But obviously the political status was
2 the main issue. The fact that we have -- we don't
3 have representation in Congress, the fact that we
4 don't vote for the president, and the fact that we
5 all know that this will not happen in the great state
6 of New York or any other great state, makes quite
7 clear that our political status and the fact that we
8 are subject to the powers of Congress, we did not
9 have the same treatment as any other jurisdiction.

10 Also, that allowed for some of the
11 administration at that time to get away with the
12 narrative, that people in Puerto Rico were just
13 incompetent, they were not able to manage federal
14 funds in a swift manner. And not only we have seen
15 what happened during the response with the
16 municipalities, but also, we took into consideration
17 how the municipalities were so effective in managing
18 the federal disaster funds that we received during
19 the pandemic. This is a real example that you can
20 use as a benchmark.

21 In the case of the pandemic, the
22 government of Puerto Rico received as any other
23 jurisdiction direct funding from the federal
24 government, and we were able to effectively deploy

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1 those funds in order to address the people of Puerto
2 Rico with no -- in comparison with other
3 jurisdictions, we have done a phenomenal job in doing
4 so. And this is very important to see because, as
5 opposed to the FEMA process, you know that you have
6 to go through an obligation and then request for
7 reimbursement, so the process takes longer. But when
8 we have the ability, when we have the opportunity, I
9 should say, to manage the process, we can do it in a
10 very professional way as done in many other states.

11 But also, I have to reemphasize what
12 other panelists said, that the fact that we are
13 considered or that the fact that we are not seen as
14 American citizens as any other American citizens in
15 the nation definitely allows some in the federal
16 administration to take that approach with the people
17 of Puerto Rico. But also, I have to highlight, as
18 Sergio Marxuach said, we also have to be fair with
19 the federal administration.

20 We had some friends in many areas of the
21 -- that were trying really hard to expedite the
22 process, but unfortunately, we saw that atmosphere
23 percolating across the federal government, just
24 putting off -- for the people of Puerto Rico. And

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1 this is not just me saying it, it's because I was
2 there in many meetings in Congress, many meetings
3 with FEMA, HUD, DOH, Treasury and even the White
4 House. And unfortunately, every single time that we
5 complied, as I said, the goal post was just moved.

6 MS. YENTEL: If I could just briefly add
7 one more -- fully agree with all of my colleagues
8 here. And defer to them on the primary reasons.

9 But just to add briefly one more piece of
10 the puzzle. It's that FEMA is, as an agency,
11 extraordinarily rigid and unable or unwilling to
12 adapt to unique needs. So, they follow a script and
13 a playbook, which is already flawed and doesn't meet
14 the needs of low income and marginalized people. And
15 then they fail to adapt that playbook to clearly
16 unique circumstances.

17 COMMISSIONER ABEGDILE: Madam Chair, may
18 I?

19 Thank you for all of your thorough
20 responses and the very substantive details you've
21 been providing to us. I want to pick up from this
22 last statement that you made, Ms. Yentel, and focus
23 everybody for a second on the idea that, because we
24 are a U.S. Civil rights Commission, we are

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1 particularly focused on the civil rights dimension,
2 which many of you have spoken to. And I wanted just
3 sharpen some of the dialogue on these issues so that
4 we can be clear for purposes of our report.

5 Some of what I've heard is that the
6 federal response was inefficient, bureaucratic, slow.
7 Some of what I've heard is that there's a sense that
8 the federal response was motivated by treating Puerto
9 Rico differently because of perceptions of race,
10 language, status, and other protected
11 characteristics. And what I'm asking those of you
12 who can respond to this is to try, and put in light
13 for us, is to share the best direct or circumstantial
14 evidence that the flawed response was in fact due to
15 these civil rights issues and not just inefficiency
16 and bureaucracy.

17 Both contribute, I'm quite sure, based on
18 what you've shared with us, but I just want to make
19 sure that we're not missing the best evidence that
20 you can marshal, that what we have here are actual
21 civil rights violations. Thank you.

22 CHAIRWOMAN CANTÚ: And let me add, the
23 rest of the list is age, religion, disability status,
24 and violations of the Constitution. Sex. Any other

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1 categories? Those are all of the lists that we want
2 to hear from. Yes.

3 COMMISSIONER YAKI: And national origin,
4 which I think a lot of you touched on.

5 MS. CRUZ: Yes. If I may, I talked about
6 the deaf population, as an example. FEMA has the
7 capacity, and it offered it in Harvey, to have
8 personnel that have American Sign Language as part of
9 the way that they communicate. That would even have
10 been a prob -- they never offered that in Puerto Rico,
11 but that would have been a problem because Americans
12 Sign language and Puerto Rican sing language are
13 totally different. The structure of the way that
14 information is communicated in the Puerto Rican deaf
15 community is quite different.

16 But I want to point out, and I think it
17 was Ms. Yentel that mentioned it, a lot of Puerto
18 Ricans don't have property titles, "título de
19 propiedad." That is especially true, and I'm sure
20 you've heard it, Ms. Cantú, from the people at Loíza
21 and El Caño Martín Peña. It took FEMA about three
22 months to be able to tell the municipalities and the
23 central government, "Listen, let us go with just an
24 affidavit that states that your neighbor knows that

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1 you've been living there for X number of years."

2 It is a clear violation of civil rights.
3 Why? Because, first of all, you don't have equal
4 access to the way that you are being treated or to
5 the services that you have a right to be provided.
6 Also, we have in San Juan and in other areas of Puerto
7 Rico, but mostly in San Juan, a very large Dominican
8 population, people that came from the Dominican
9 Republic with or without the appropriate papers to be
10 in Puerto Rico. I don't like to call anyone illegal.
11 They just don't have the appropriate papers,
12 undocumented.

13 Just this morning we woke up to the news
14 that New York passed a legislation stating that
15 anyone can vote in their election. So, it's moving
16 forward. But it made it a lot more difficult for
17 people that were undocumented to come forward because
18 when they see somebody dressed with the federal seal
19 they think of ICE. So, they don't come forward and
20 at a time like that, people have to come forward.

21 But also, the people that were -- and
22 I'll give you an example. There was the ship, I
23 forget the name of the ship that was brought -- the
24 U.S. Comfort. The U.S. Comfort was brought to Puerto

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1 Rico and we thought, "Oh, that's great. It really is
2 going to help." And then there were no guidelines and
3 people were denied treatment. People were denied,
4 they were not allowed. If we sent them to the U.S.
5 Comfort, they were not allowed to go in because the
6 U.S. Comfort would only deal with certain types of
7 ailments. So, time after time there are specific
8 examples.

9 And I just want to finish with this, with
10 something that Ms. Miranda mentioned, and Ms.
11 Navarro, in the U.S. the state of Texas receives money
12 from FEMA, but also the cities directly receive money
13 from FEMA. Especially if the cities are above 500,000
14 or 350,000 people that are populated. No one in
15 Puerto Rico, no city -- San Juan at the time had
16 375,000 population. If there is a way -- and where
17 there is a will, there is a way to not only leave
18 that money at the state level in Puerto Rico but to
19 also treat us like other jurisdictions where they put
20 the money in the hands of the municipalities and also
21 have a plan for the municipalities to put into the
22 hands and the money of the nongovernmental
23 organizations, it is a lot faster.

24 What we learn from New York City is to

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1 look -- get religious leaders, recreational leaders,
2 our community leaders, and put the aid in their hands.
3 I never went around giving boxes of food for political
4 reasons. I gave it all to organizations that then
5 gave the food for humanitarian reasons. And I think
6 that looking at protecting the civil rights from the
7 standpoint of the municipal government and the
8 nongovernmental organizations also helps to minimize
9 some of those inefficiencies in the distribution.

10 MR. PADILLA: Mr. Commissioner, as I told
11 earlier, we do have people, trans people that was
12 denied because the system says -- a gender mark was
13 different than they would assume. And that's a clear
14 messing with civil rights. That's a clear way to
15 discriminate those people because they have to go
16 through an appeal process in order to get -- and they
17 were devastated because of the hurricane impact. And
18 they were lost in the middle of nowhere trying to
19 fight with this agency because of those gender marks.

20 COMMISSIONER YAKI: Can I do a quick
21 follow up on the U.S. Comfort? One of the things
22 that -- I'm sorry, Commissioner, I just want to get
23 this.

24 One of the things that boggles my mind

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1 about what happened with María is in most disasters,
2 deaths occur at the event and not after the event.
3 This was flipped in Puerto Rico because of issues of
4 people who have dialysis, people who have diabetes -
5 - there are any number of people who were -- who would
6 fit in the definition of disabled under the Americans
7 with Disabilities Act. Why were they -- did they
8 attempt to get access to the U.S. Comfort? Was there
9 any sort of recognition of this by the federal
10 government in getting appropriate dialysis machines
11 or supplies of insulin to the island? Because this
12 information is available to the federal government.
13 They have it all, whether it's through the census,
14 the American Community Survey, whether it's their
15 Medicaid stats, they know what the population's
16 health is like here and who's got what or more than
17 likely whatever. Did any of that occur?

18 MS. CRUZ: Mr. Yaki, the Hospital El
19 Maestro, which is very close by, needed generators.
20 They did the forms, and they did the forms, the
21 generator never came. The Municipality of San Juan,
22 at the time, we put the generators in there after
23 their ICU collapsed. And why after? Because that's
24 when we could get there.

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1 Ever since -- while I was mayor, the
2 Hospital El Maestro, which is a hospital for the
3 teachers that have worked in our public system, every
4 time there was a blackout, which in Puerto Rico occurs
5 every day -- I'm living now in Massachusetts, but my
6 parents, my brother, and my daughter live in Puerto
7 Rico and it's like it's a joke, you know. And it's
8 not a joke because people -- we don't want electricity
9 to take warm showers. We wanted electricity at the
10 time, so our doctors did not have to operate with the
11 light on their cell phones.

12 So, no. FEMA, you put out a form and you
13 asked for it and you asked for it and nothing came.
14 Because I screamed and I complained a lot, they put
15 an entire battalion of people from FEMA to work at
16 the Coliseo Roberto Clemente, which was the largest
17 shelter in Puerto Rico. And what they did was handle
18 and handled the paperwork. I don't know if Ms.
19 Miranda has gotten this information from other
20 mayors, but we input the information in one system
21 and then they literally would tell us, "No, no.
22 That's not good. Now you have to input the same
23 information in another system."

24 This is why I have proposed that we

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1 should come up at the U.S. national level and at the
2 Puerto Rican national level with an Emergency
3 Management System that includes all of the
4 information previously. We know what a category 1
5 hurricane is going to reflect in terms of -- maybe El
6 Centro for Nueva Economia can tell us, "Category 1,
7 this is usually how much we are going to lose." So,
8 we shouldn't be waiting for the administration,
9 whichever administration it is, to decide what
10 they're going to approve from now on. So, the answer
11 is no. These hospitals that -- and I went to various
12 hospitals in San Juan, they did not receive what they
13 had asked from FEMA because simply FEMA did not have
14 generators all in hand.

15 COMMISSIONER YAKI: And the Comfort
16 wasn't --

17 MS. CRUZ: The Comfort, you would ask for
18 people to be in an intake in the Comfort and they
19 would tell us no, it's not for that type of -- women
20 that wanted to give birth, it's not like you decide
21 when you want to give birth. So, I want to give birth
22 in a place where I know that my child will be taken
23 care of.

24 COMMISSIONER YAKI: Tell me what were the

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1 criteria? You had to be maimed or something like
2 that? I mean, if you're in a medical emergency,
3 wasn't that the whole purpose that they trumpeted the
4 Comfort --

5 MS. CRUZ: Trauma. If you had trauma,
6 severe trauma, then. But not for --

7 COMMISSIONER YAKI: Diabetic shock, no?

8 MS. CRUZ: No. No.

9 COMMISSIONER YAKI: Renal failure from
10 dialysis?

11 MS. CRUZ: No.

12 And I'll finish by saying this, at the
13 municipality of San Juan, with the University of
14 Sagrado Corazón -- and I know what I'm going to say
15 is going to be controversial, they had about 30 Cuban
16 doctors that were studying to become nurses in the
17 United States and the president of the University of
18 Sagrado Corazón brought them to San Juan.

19 And we went through communities just
20 scouting for people and gave out about 736 -- of
21 course, you know it might be 700 and more than that,
22 but medication, that we identified people. And we
23 would go back and give them the medication again and
24 again and again. So, there is no national Puerto

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1 Rico's stockpile of things like diabetic insulin and
2 so forth, high blood pressure, asthma medications.

3 We established things called Centers for
4 Citizen Transformation where they would have access
5 run by the communities, and Comerío, is doing one
6 next week ran by the communities to deal with basic
7 health issues at the Community level.

8 MS. GOSSETT: If I can add to your
9 question. I'm going to find for you, I recall quite
10 a few articles coming out around the time around the
11 problems with the Comfort and how they were turning
12 people away. So, I'm going to search those and share
13 them.

14 And I'd also like to put you in touch
15 with MAVI, which is an organization that I referred
16 to earlier, not by name. But when I was speaking in
17 my report. Immediately after Hurricane María, they
18 requested that data from FEMA because they're an
19 organization that their expertise is advocating for
20 and providing services to people with disabilities
21 all across Puerto Rico and they knew that those people
22 were going to have special needs and that needed to
23 be immediately attended to. They did not receive
24 that data.

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1 First, they were denied because they were
2 told there were confidentiality issues and there is
3 no way around that. After their insistence, suddenly
4 FEMA found a way around it. And yes, with an MOU
5 they could get that data they needed -- they provided
6 that MOU. It still took them nine months to give
7 that data to MAVI. As a reminder, those 3,000 people
8 -- more than 3,000 people who died in that aftermath,
9 many from those chronic health issues and
10 disabilities, died in the first six months.

11 And had that data been provided to that
12 organization, they may have been able to pull their
13 resources together to provide their support for those
14 folks. But as mentioned, and mind you just mentioned
15 it, FEMA was not working with the nonprofit
16 organizations here on the ground who know their
17 communities best, who were the first responders. And
18 we have seen this in each of the disasters since.

19 There is for some reason a resistance
20 from both FEMA and the central government in Puerto
21 Rico to partner with the network of community based
22 and grassroots organizations to capitalize on their
23 expertise and the trust that they have in
24 communities. And the result of that was lives lost,

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1 and in particular our disability community.

2 COMMISSIONER ADEGBILE: Great, I think
3 that there may be a couple that just wanted to come
4 back to my question about.

5 MS. MIRANDA: Yeah.

6 COMMISSIONER: Okay. Thank you.

7 MS. MIRANDA: I wanted to add, I agree
8 with everything that Stephanie said, but I think --
9 and I understand your question in terms of the
10 specific -- I can't even say it in Spanish, but I can
11 understand the question. But I think it's more
12 systemic than just an example. In the case of the
13 League of Puerto Rican Cities, and I agree with what
14 Charlotte is saying and the mayor are saying, that
15 nonprofit organizations, community organizations
16 were first responders, but so were municipalities.

17 So, in the League of Cities, what we're
18 advocating is for to move from resilience to systemic
19 change. Because the focus on resiliency, what it
20 means is that we have to keep on being prepared to
21 survive whatever comes our way. I'm tired and
22 exhausted of being resilient. I can understand
23 resiliency from a climate change perspective. But
24 when it comes to recovery, for you to ask me and my

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1 communities to be resilient, it's really a slap on
2 the face.

3 So, I think the conversation has to be
4 more about the system that we have and how there has
5 to be real systemic change to impede the violation of
6 civil rights.

7 We can give you a list of concrete
8 examples if you want, if we have more time, we can
9 send it your way. But I think, overall, the
10 conversation has to be about the system that we have
11 and how there has to be real systemic change that
12 moves us from resiliency to real equitable
13 development and recovery. So, I think that that's
14 something that should be included.

15 MS. GOSSETT: To add to that question,
16 specifically, I think we can look to the fact that
17 President Trump wanted to sell Puerto Rico as a
18 response, right? If we want to see what the attitude
19 was towards Puerto Rico in particular, I think that
20 gives a clear example. And also in language access.

21 Language access is protected under the
22 Civil Rights Law for national origin. Puerto Rico is
23 clearly an example of that. In 2000, President
24 Clinton put out an executive order that required

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1 federal agencies to provide meaningful language
2 access. I do not believe FEMA is complying with that.
3 There is guidance, specific guidance on when that
4 meaningful access has to be provided. I'm going to
5 read it and you determine whether Puerto Rico meets
6 the standards, the four factors that are supposed to
7 be considered.

8 It's one, the number or proportion of
9 LEP, limited English proficient persons, who are
10 eligible to be served or likely to be encountered by
11 the program or grantee. In Puerto Rico, that's
12 everybody. The frequency with which LEP individuals
13 come in contact with the program. In a disaster
14 relief program, understood. The nature and
15 importance of the program, activity or service
16 provided by the program to people's lives. What is
17 more important than your disaster relief and
18 recovery? And their resources available to the
19 grantee, recipient, or cost.

20 In the case of FEMA, with Puerto Rico
21 alone, has over \$38 billion at its disposal. That's
22 only Puerto Rico. I believe Puerto Rico meets all of
23 those standards, and FEMA should be in compliance
24 with language access, and they absolutely were not in

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1 their response to Hurricane María.

2 COMMISSIONER ADEGBILE: I just want to
3 check to see if Ms. Yentel wanted to weigh in on this
4 topic and then there may be others.

5 MS. YENTEL: Thank you. And I would agree
6 with everything that has been said and especially the
7 last comments, which I was going to touch on and
8 won't.

9 But I would just come back to the title
10 documentation issues as what I think is one of the
11 clearest patterns of discrimination by FEMA for
12 decades. After Hurricane Katrina, there were
13 thousands of people in Alabama and Louisiana,
14 predominantly, disproportionately black households
15 in predominantly black communities that hand down
16 home ownership more informally that were denied
17 assistance.

18 After Hurricane Michael in the Panhandle,
19 50 percent of families, households, were denied
20 assistance due to title documentation. Again, it was
21 in the region of the state that is disproportionately
22 people of color, and disproportionately poor. After
23 the hurricane -- after the wildfires in California,
24 70 percent of applicants were denied assistance due

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1 to title documentation.

2 Again, these were predominantly Latino,
3 farm workers who, again, had informal documentation
4 and were denied. In all cases, FEMA was aware that
5 the issue was as simple as having alternative
6 documentation but chose instead to deny households.

7 And again, in Puerto Rico, 77,000
8 households were denied for that reason. FEMA has
9 made improvements very recently and they're important
10 improvements. They do nothing to help all those
11 households that have already been denied. And
12 especially in the case of Puerto Rico and the more
13 recent disasters, FEMA should be required to reopen
14 those cases, allow those applicants to reapply, and
15 receive the assistance they're entitled to.

16 COMMISSIONER ADEGBILE: One
17 clarification on that point. Does the requirement of
18 showing title exist in the law?

19 MS. YENTEL: Actually, by FEMA's own
20 rules, FEMA is allowed to use alternate
21 documentation, but they refuse to do so again and
22 again.

23 COMMISSIONER ADEGBILE: So, it's a
24 practice. In a sense, it's a practice that's being

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1 used that is having discriminatory impact over and
2 over again in a disaster region after disaster region
3 is what you're telling us.

4 MS. YENTEL: Exactly. Right.

5 COMMISSIONER ADEGBILE: Thank you.

6 MS. CRUZ: One very specific example.
7 Once they got over FEMA calling beef jerky an entrée,
8 if you look at the box, it said entrée and it was a
9 beef jerky. Then they went to military ration food.
10 The instructions to that were in English. And in a
11 lot of cases people would burn themselves because if
12 you didn't know what you were doing, you could burn
13 yourself.

14 So, one of the things that I've said in
15 my recommendations is that I suggested to FEMA many
16 times, with no avail, that we can deputize municipal
17 employees. We can train municipal employees and all
18 78 municipalities. Not all of them are going to be
19 able to work in a disaster like this, which I hope in
20 my lifetime I never get to see again, but FEMA can
21 deputize them and then they would have access
22 immediately to thousands of people that speak
23 Spanish, that know the culture and that can help them
24 navigate within.

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1 That would be a very easy way to ensure
2 that we have the appropriate amount of people and
3 make sure that the intellectual property of those
4 processes stays in Puerto Rico.

5 COMMISSIONER YAKI: I yield to
6 Commissioner Kladney.

7 CHAIRWOMAN CANTÚ: Commissioner?

8 COMMISSIONER KLADNEY: Thank you, Madam
9 Chair. We've talked about a lot of different
10 problems. Is there one location where you can talk
11 about the solutions in preparation for the next type
12 of disaster? In other words, is there a list of
13 solutions that you propose to assist the Puerto
14 Ricans in the face of another disaster?

15 MS. MIRANDA: Yes. A resounding absolute
16 yes, bold, underscore. There's a lot of things that
17 can be done.

18 COMMISSIONER KLADNEY: Were you provided
19 the tools?

20 MS. MIRANDA: Yes. I can -- do you want
21 me to read them now?

22 COMMISSIONER KLADNEY: We only have a few
23 more minutes for questions.

24 MS. MIRANDA: I'm going to give you

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1 three. But I think that the first one would be to
2 decentralize recovery funds to ensure a more
3 expeditious, equitable, and just recovery. Puerto
4 Rico is heavily centralized and there's some
5 metrocentric approach that impedes access to those.
6 So, I think that would be one.

7 I think that the other one that I will
8 highlight would be to reduce the risk of disaster
9 recovery spending at the local level through the
10 allocation of funding to increase the capacity of
11 municipalities. I agree with what the mayor is saying
12 that municipalities should be seen as a great
13 resource that we have. They are the first responders.
14 So, we can submit our -- you have our written
15 statements. So, our recommendations are there. But
16 I think decentralization would be the central thing
17 that should be done.

18 COMMISSIONER KLADNEY: I'm quite
19 interested in the response to disabled people. And
20 yesterday we went to a couple of communities, just
21 maybe half an hour away, which could be very far away
22 if the roads are blocked. And I think director
23 Padilla Ruiz spoke about a list of disabled people.
24 Is there any inventory taken as to how you can assist

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1 disabled people in these communities outside of San
2 Juan and were they assisted in San Juan at the one
3 shelter? Was there any actual assistance provided
4 that could save their lives?

5 MS. CRUZ: Yes, Commissioner. The
6 Municipality of San Juan ran seven shelters, the
7 largest shelter in Puerto Rico was Coliseo Roberto
8 Clemente. We had about 850 people, 200 employees
9 that remained there to sustain all of the other
10 operations. We produced between 5,500 and 6,000
11 meals a day to provide to everybody. But every
12 shelter had an emergency unit, as emergency as it
13 could be, we could deal with everything except
14 "sutura" -- suturing, major suture. We had our
15 ambulances and then we could send them to the
16 municipal hospital which is very close by.

17 But one of one of the things that we did
18 is we relied a lot in the community, organizations,
19 nongovernmental organizations. And you can go to
20 Clarita right now, they have the first Center for
21 Citizenship Transformation. And they had, which was
22 done after Hurricane María, but we had already been
23 working with her leadership of all political parties,
24 I don't even know which party they belong to, and

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1 they had a list, row by row, street by street of the
2 health conditions of each one of the people.

3 COMMISSIONER KLADNEY: And that was in
4 San Juan.

5 MS. CRUZ: That was in San Juan.

6 But I know the same thing happened in
7 communities in Comerío, in communities in Loíza, in
8 Río Grande, San Sebastián, where the mayor was very
9 active and in fact San Sebastián was the first
10 municipality that with their volunteers and municipal
11 employees, put their electrical grid to work, not
12 waiting for PREPA at the time or the central
13 government.

14 So, there were some efforts at the
15 municipal level and by nongovernmental organizations.
16 It depends on the municipality, how tight you are
17 with them, and how the information is. We knew at
18 the Municipality of San Juan of four people that on
19 any situation we called because they needed oxygen
20 and machinery to keep.

21 COMMISSIONER KLADNEY: Right.

22 MS. CRUZ: So, we would call them up,
23 pick them up, take them to the hospital and keep them
24 there to make sure that they were taken care of. But

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1 that could be done at a national Puerto Rican level
2 in a more structured way. But I would put the weight
3 on the nongovernmental organizations and the
4 municipalities to support whatever the central
5 government can provide.

6 MS. MIRANDA: Can I can I add? And we
7 got connected through Hispanic Federation. But there
8 is -- La Liga is partnering with Three Plus Connect
9 to develop an app that will allow us not only to close
10 the gap between the disaster and the needs that the
11 community needs. And what we ask the team, and I
12 don't know if anybody is going to talk about this,
13 but one of the things that we asked was let's not
14 only think about how do we disburse the goods that
15 are coming, the commodities, but how can we have an
16 assessment -- like a community census per community,
17 per municipality, where we could have the data and we
18 can have like a continuous community survey that
19 would be done every year to identify the need.

20 So, that's something that we're working
21 on right now with this organization. But as you know
22 that takes money, so there has to be political will
23 from the central government to understand that a tool
24 like this that is managed by an organization in

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1 collaboration with other nonprofit groups and in
2 collaboration with municipalities is something that
3 should be an investment. Recovery is more than
4 buildings, is systemic change. So, we're advocating
5 for that as well.

6 COMMISSIONER KLADNEY: Do you believe
7 that there were any extraordinary delays in receiving
8 funding that you've mentioned because of
9 discrimination? Do you have any evidence of that?

10 MS. GOSSETT: We can provide some from
11 some of the investigations that have been looked at
12 into, again, how the Trump administration
13 particularly put some -- many of the things that were
14 mentioned that were barriers, we can look to those
15 and assume that those unique barriers that were
16 forced on Puerto Rico were probably done
17 intentionally with an effort to prevent funding from
18 getting to Puerto Rico that created delays. And
19 whether there was an explicit line that says, "We're
20 doing this to delay it"? No. Was that something
21 that can be understood by many of the decisions that
22 were made that you could assume that they were going
23 to cost delays? I think so.

24 And so, if we collect a lot of what has

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1 been said here today, we'll see that those decisions
2 that were made and applied uniquely to Puerto Rico,
3 those administrative barriers, that moving of the
4 goalpost constantly seemed to have been intentional
5 interference. And we've seen along the way, not just
6 with FEMA, but with other funding that has come to
7 Puerto Rico, through the Department of Education,
8 through HUD, and others.

9 MR. MARXUACH: I have looked at the HUD
10 funding specifically. And if you read the report
11 from the office of the Inspector General that came
12 out in April, it's very clear that they were playing
13 some sort of game with Puerto Rico. I mean, it is
14 very hard to pinpoint a specific individual and say,
15 "This person specifically wanted to discriminate
16 against Puerto Rico." But the language that was used
17 by former HUD officials that agreed to be interviewed
18 by the Inspector General I think is very clear.

19 I mean, they mentioned things like poison
20 pills. They were concerned about whether some of the
21 things OMB was requiring were even legal inside HUD,
22 they were questioning that. Also, the submission to
23 review by OIRA is unheard of in the case of disaster
24 relief and those funds were subjected to that

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1 additional review. So, if you look at the totality
2 of the circumstances, at least to that 8.3-billion-
3 dollar tranche for mitigation activities, I think
4 it's very clear that the intent was to delay as much
5 as possible, the disbursements of those funds to
6 Puerto Rico.

7 COMMISSIONER KLADNEY: Thank you very
8 much.

9 COMMISSIONER YAKI: Can I just follow up
10 really quickly?

11 Has anyone done any look -- you talked
12 earlier a lot about how all these contracts are going
13 to the mainland and not going locally? FEMA doesn't
14 look to see were those contracts going to white
15 majority firms versus the fact that -- if they were
16 to do local contracts here, they would, just by sheer
17 numbers, be going to black and brown owned firms.

18 MR. MARXUACH: We put out a dashboard of
19 some of my colleagues at the Center for New Economy,
20 which Ms. Gossett Navarro mentioned, but
21 unfortunately, we couldn't get that level of detail.
22 We did identify though that over 90 percent of the
23 contracting money was going to mainland firms, but we
24 really couldn't get the granularity that you are

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1 asking for. And perhaps that's something that could
2 be changed in the system going to the future, to
3 request that that data be produced so the analysis
4 can be done by independent observers.

5 MS. MIRANDA: I do want to add this report
6 that was published by Sembrando Sentido. It's
7 included in our statement. But what they studied was
8 CDBD-DR. And what's important to understand is that
9 there's also a narrative in Puerto Rico by our central
10 government that says that there's no capacity in
11 Puerto Rico. We were really not ready to manage what
12 happened with Maria. That's the reality.

13 But the fact that we kept on signing
14 contracts with outside consulting companies that have
15 no cultural competence, that they don't manage the
16 language, and then they will come to Puerto Rico, and
17 they hire Puerto Ricans to do the job, is something
18 that's really concerning for us. And one of the
19 things that's concerning for us is that there is no
20 knowledge transfer.

21 This is resiliency as an example, if we
22 want systemic change, we have to hire companies in
23 Puerto Rico and build the workforce development and
24 we have to make sure that we have the capacity to

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1 withstand whatever comes our way. So, that report is
2 included and mentioned. But it's not for FEMA, it's
3 CDBG-DR.

4 COMMISSIONER YAKI: And just one little
5 thing. I wonder if you would agree with what I think
6 I've been hearing, which is that decentralizing aid,
7 using more the municipalities or community-based
8 organizations, could have the impact of addressing
9 issues of language, cultural competency, knowledge of
10 the disability community, persons in the different
11 communities, an immediate response, do you agree or
12 disagree?

13 MS. CRUZ: Definitely agree. That is the
14 way it should go, and that is the way that it happens
15 in some U.S. jurisdictions.

16 And if I may, Mr. Kladney, just one
17 quote.

18 When asked why it took so long for FEMA
19 to get things to Puerto Rico, this is a direct quote
20 from the then president of the United States.
21 "Because they're an island surrounded by water. Lots
22 and lots of water, ocean water." So, when the head is
23 not screwed on right, the rest of the body doesn't
24 work.

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1 CHAIRWOMAN CANTÚ: I'm going to check in
2 with Commissioner Gilchrist before we close today's
3 first panel. If there's any additional information or
4 an additional comment, please.

5 COMMISSIONER GILCHRIST: Just want to
6 thank the panelists for their remarks today. They
7 were interesting remarks and I appreciate their time
8 today. I also appreciate the Commission having a way
9 for those that were unable to be with you today to
10 chime in. So, again, thank you for your comments
11 today and thank you, Madam Chair, for allowing me to
12 make those remarks.

13 CHAIRWOMAN CANTÚ: Thank you,
14 Commissioner.

15 With that, I do appreciate that everybody
16 got started, almost exactly perfectly on time. And
17 I also want to let you know we're going to be taking
18 a 10- minute break. Do not go far away because we
19 will start on time. Thank you.

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PANEL 2

1
2 CHAIRWOMAN CANTÚ: Welcome back. I will
3 now briefly introduce the panelists in the order in
4 which they will speak for our second panel. Our first
5 speaker is Ariadna Michelle Godreau Aubert, executive
6 director, Ayuda Legal Puerto Rico. Our second
7 speaker is Tania Rosario Méndez, executive director,
8 Taller Salud. Our third speaker is Ruth Santiago,
9 Esq., Comité Diálogo Ambiental, Committee Dialogue on
10 the Environment.

11 Our fourth speaker is Carla Minet,
12 executive director, Centro de Periodismo
13 Investigativo, the Center for Investigative
14 Journalism. Our fifth speaker is Yarimar Bonilla,
15 director, Center for Puerto Rican studies. Our sixth
16 and final speaker for panel two is Amaris Torres
17 Rivera, executive director, Fundación Fondo de Acceso
18 a la Justicia, Access to Justice Foundation. Ms.
19 Godreau Aubert, you are first up. Please proceed.

20 MS. GODREAU: Distinguished member of the
21 Commission, thank you for your invitation to present
22 this testimony.

23 Civil rights in Puerto Rico have been in
24 peril for long, a situation worsened by austerity,

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1 inequality, unsustainable public debt, and
2 colonialism. Disasters have brought us closer to a
3 social and economic crisis that threatens the
4 possibility of a future in Puerto Rico. Eleven
5 percent of the population has left in a decade.
6 Reliving Hurricane María and its impact is a
7 conscious attempt to transform neglected collective
8 pain into an actual just recovery.

9 Because we are a colony, federal and
10 local governments share the responsibility to
11 guarantee civil and human rights and to lead
12 survivors to resiliency. We need disaster assistance
13 to arrive quickly, ensuring accessibility to shelters
14 and aid, compliance with civil rights standards. We
15 need coherent planning, equitable access to funds,
16 displacement minimization guarantees, and real and
17 effective participation. Recovery programs should
18 never be a blind bet on random and possible outcomes,
19 but a strategized road towards a long-term
20 sustainable recovery. Crisis do not affect all
21 people equally. Unattended emergencies have
22 accumulative effect on the rights of historically
23 marginalized groups.

24 Inexistent and flood recovery statistics

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1 and systemic racism allow discrimination against
2 women, black, and elders through their recovery
3 process in Puerto Rico to remain unaccounted for.
4 Our experience at Ayuda Legal Puerto Rico, leading
5 disaster legal aid and advocacy post-María, and
6 accompanying thousands of families throughout the
7 island, signaled to an unequivocal disparate impact
8 on these groups. Nearly 58 percent of FEMA
9 applications and 75 percent of the appeals were
10 denied. Two-thirds of the families that received
11 assistance to repair their homes received awards of
12 less than \$3,000, according to the Puerto Rico
13 Comptroller. Between 43 percent and 80 percent of
14 the works commissioned by the FEMA STEP program, Tu
15 Hogar Renace, were left unfinished.

16 On February 2018, the Government of
17 Puerto Rico was allocated \$20 billion in CDBG-DR
18 funds. Families who were not able to access FEMA,
19 who were turned down or neglected by Tu Hogar Renace,
20 applied to DR Housing programs. Between July 2019
21 and January 2020, 27,000 families applied. As of
22 today, only 1,500 hundred homes have been repaired
23 and less than 300 houses have been rebuilt. In
24 February 2020, it was estimated that between 15,000

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1 and 18,000 families were still living under blue
2 tarps.

3 First response was characterized by abuse
4 of force, deficient nutritional boxes, a delay in the
5 establishment of disaster relief centers, officials
6 who spoke only in English, and the militarization of
7 response. The local government, otherwise absent,
8 implemented a curfew that was senseless, considering
9 that it was people who assumed the first response.

10 A few days into the curfew, a black man
11 was killed by the police in a clear show of force.
12 Despite the major power outage that lasted for long
13 months and its impact in communications, FEMA
14 insisted on having disaster applications filed
15 through hotlines or internet platforms. Lack of
16 transportation and access to justice increased the
17 vulnerability of low income of elders, of families
18 with kids, and survivors with mobility challenges who
19 could not reach the DRC to present their
20 applications.

21 Ayuda Legal Puerto Rico went to
22 communities, interviewed affected individuals,
23 traveled back to areas with internet access, uploaded
24 thousands of applications, and later returned to the

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1 communities to hand down registration numbers so that
2 those people could have a chance. Half of the
3 population of Puerto Rico lacks a formal title.
4 Nothing in Puerto Rico laws or FEMA's regulations
5 require owners to register their properties, yet
6 FEMA's incorrect interpretation of "owner" excluded
7 thousands of families from receiving housing
8 assistance.

9 At Ayuda Legal, we researched, we
10 created, we drafted a sworn statement to serve as the
11 alternative proof of title, and, with other
12 advocates, we fought FEMA to stop them from barring
13 assistance to families with informal titles. In the
14 end, in June 2018, we won, but it was already too
15 late. FEMA's reluctance to notify applicants about
16 their right to appeal and to use this form, placed on
17 the backs of non-profits the responsibility to let
18 applicants know about this chance.

19 Thousands of families lost the
20 possibility of receiving assistance. This form
21 recently became part of the new FEMA guidelines.
22 While we celebrate the impact that this will have on
23 other survivors in other jurisdictions of the U.S.,
24 we condemn that this will not have a retroactive

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1 effect for Puerto Rico, so that applicants that were
2 unfairly denied assistance could have the possibility
3 of finally repairing their homes.

4 Moreover, and recently, FEMA's
5 recoument processes has become an actual concern for
6 survivors who are still awaiting a safe dwelling.
7 Lack of formal documentation responds to social
8 economic elements such as lack of access to justice,
9 insecurity of tenure, and land rescues grounded on
10 unmet housing needs. Moreover, informal titles
11 respond to a system grounded on racial oppression,
12 slavery, redlining, predatory lending practices,
13 which historically forbade black people from owning
14 land. Lack of clear ownership eligibility criteria
15 has also been an obstacle for black and people of
16 color in the U.S.

17 FEMA and other disaster recovery funds
18 should abide by policies that promote access. It is
19 our position that individual legal strategies are not
20 a real solution for the title issue nor is the federal
21 imposition of real property regulatory system amidst
22 disasters. Addressing informal titles in Puerto Rico
23 requires a structural policy change at a local level
24 that cannot be discussed and/or solved in an

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1 emergency situation.

2 Although I don't have more time for this
3 brief initial comment, I wanted to stress that first
4 response application processes and eligibility
5 criteria sets the ground for equitable and just
6 recovery. Addressing civil rights protection
7 requires revising how these instances comply with
8 principles of nondiscrimination, accountability, and
9 participation.

10 And also the fact that we are here before
11 this Commission because we truly believe that we are
12 in a moment where we can elaborate clear cross cutting
13 guidelines and with practices to respect, protect,
14 and promote the civil rights of people amidst
15 disasters even of those people who are still living
16 in a colony. Thank you very much.

17 CHAIRWOMAN CANTÚ: Even though we had a
18 malfunction on our timing, you were 10 seconds early,
19 so "te lo felicito." That's wonderful.

20 Our next speaker is Ms. Santiago. No.
21 It's Méndez. Please bear with me, I'm
22 malfunctioning. Please proceed, thank you.

23 MS. MÉNDEZ: Thank you, chairwoman -- and
24 all members of the Commission for this opportunity to

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1 speak about FEMA's role in disaster preparedness and
2 response to Hurricane María in Puerto Rico.

3 For more than 40 years, Taller Salud has
4 addressed health disparities that often are rooted in
5 social, racial, and economic inequalities. The
6 following statement is based on expertise, first-hand
7 experience, and data driven insights. "In the
8 aftermath of Hurricane María, Puerto Rico was on its
9 own with limited capacity and resources to guarantee
10 subsistence needs and social protection."

11 It should be recalled that a major
12 disaster declaration was signed by former president
13 Donald Trump, but a sense of urgency and commitment
14 to robust actions was missing. After days without
15 assistance, it became evident that the emergency
16 situation was evolving into a major humanitarian
17 crisis. There was no electricity, no food, no water,
18 no cell phone service or internet. Our entire
19 infrastructure had collapsed, and our most vulnerable
20 people were left to die in their homes. I want to be
21 very clear, federal preparedness and response to
22 Hurricane María was at best mediocre, and at worst
23 genocidal.

24 Before this body, Taller Salud would like

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1 to denounce FEMA's lack of planning and coordination
2 coupled with discriminatory practices that cost
3 thousands of lives in Puerto Rico. In Loíza, a town
4 that is majority black and majority women, 53 percent
5 of people live under the poverty line. Gender
6 inequality manifests itself in a variety of ways,
7 including poverty and lack of economic access, lack
8 of housing, underemployment, lack of support system,
9 and a high rate of gender-based violence. When
10 emergency strikes, women are always at the forefront
11 of recovery and rebuilding, but they also bear the
12 brunt of calamity and are the most vulnerable at the
13 hands of austerity, physical abuse, institutional
14 violence, and lack of access to proper health care,
15 and safe housing.

16 After the storm, five of the seven
17 domestic violence shelters in Puerto Rico had to
18 close due to infrastructure damage, lack of
19 electricity, and absence of support by the central
20 government. Because police officers were acting
21 mostly as traffic and supply guards, women were
22 unable to denounce violent situations and were forced
23 to stay in dangerous environments. Local news
24 reports have counted seven women murdered by partners

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1 or ex-partners during the aftermath of the
2 catastrophe. But to this day, the Puerto Rico Women's
3 Advocate Office has not assessed nor published
4 validated data regarding violence against women after
5 Hurricane María. All of this constitutes a violation
6 of women's rights.

7 The decisions made by FEMA in the first
8 30 days after the hurricane had consequences we are
9 still dealing with four years after the storm made
10 landfall. According to 2020 census data, Loíza has
11 experienced a 21 percent reduction in its population.
12 That's a 13 percent increase from the American
13 Community Service 2017 estimate. This displacement
14 has in part happened as a direct result of FEMA's
15 inability or unwillingness to expedite the relief aid
16 process. More than 3,000 homes in Loíza were left
17 without roofs or so severely damaged that were
18 rendered unsafe to live in. Yet FEMA has repeatedly
19 rejected federal assistance requests from residents
20 because of regulatory requirements that aren't
21 tailored to the geographic and social realities of
22 Puerto Rico.

23 In 2018, FEMA published flood mapping
24 declaring 95 percent of Loíza in a flood zone, making

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1 it impossible for our communities to rebuild post-
2 emergency as FEMA requires flood insurance in order
3 to reimburse for damages. Yet those same lands can
4 be swiftly picked up by private capital contributing
5 to gentrification, resource depletion, and even more
6 displacement down the line. This bureaucratic chain
7 is not only deficient, but it is downright cruel and
8 discriminatory.

9 However, the immediate needs in Loíza
10 were met with an immediate response from the
11 community. Women specifically organized themselves,
12 surveyed the destruction and quickly got to work to
13 ensure the safety and well-being of those around
14 them. They rolled up their sleeves and set up
15 community kitchens across Loíza to cook for hundreds
16 of people.

17 Our approach to human rights and the
18 facilitation of participatory processes within and
19 outside of our community allowed us to promptly
20 address the magnitude of the needs and to evaluate
21 the necessary adjustments to the best of our
22 abilities. We did community censuses around town to
23 better understand the urgent needs of women, men,
24 children, senior citizens, and people with

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1 disabilities. After all, nobody knows communities
2 better than community members themselves.

3 The Puerto Rican diaspora was vocal about
4 the human rights violations occurring on the island,
5 and with the help of hundreds of volunteers, we got
6 aid where it belonged, in people's hands and homes.
7 Undeniably, since 2017, Puerto Rico's history has
8 been divided into chapters before and after María.
9 The atrocities witnessed after this tragedy serve as
10 a reminder of our colonial status and the severe
11 impact it has on the lives of Puerto Ricans on the
12 island and across the globe. One thing is crystal
13 clear to us. When the government doesn't do its job,
14 people lose their lives.

15 Since September 2017, inequities have
16 harshened, personal and professional opportunities
17 are now much more fleeting. Social and well-being
18 programs are even more deficient and lacking. Our
19 communities and younger generations face the choice
20 of leaving their hometowns at a rate much higher than
21 before. Without a doubt, COVID-19 has exacerbated
22 these circumstances, but the beatings our island took
23 from the hurricane winds do not compare to the
24 governmental abuse our people face immediately after

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1 and to this day.

2 It is imperative that the government
3 learn from Taller Salud's feminist strategy and
4 listens to community-led coalitions as it develops
5 disaster preparedness and recovery plans. Our work
6 demonstrates the power of community resilience and
7 the importance of feminism as a principal in disaster
8 relief. Long-term recovery efforts require investing
9 in the women leaders in the communities.

10 That's the way forward, alongside our
11 communities with our women on the front lines
12 prioritizing the collective, centering the voices of
13 those most affected by the issues, looking for
14 solutions and answers within our peoples, not
15 without. The solution has always been and will always
16 be collective. Thank you.

17 CHAIRWOMAN CANTÚ: Thank you, Ms. Méndez.

18 We will now hear from Ms. Santiago.

19 MS. SANTIAGO: Good morning, Chair Cantú
20 and members of the Commission. I appreciate the
21 opportunity to testify on the civil rights
22 implications of the federal response to the impacts
23 of Hurricane María in Puerto Rico. This
24 testimony focuses on the multiple efforts that

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1 numerous community and environmental groups have
2 made to provide input to FEMA and other government
3 agencies on the necessary transformation of the
4 Puerto Rico electric system to address the
5 disproportionate burdens that centralized fossil-
6 fired, import-dependent energy generation exerts on
7 poor and majority Afro-descendant communities in
8 municipalities of Salinas, Guayama, Peñuelas,
9 Guayanilla, and other municipalities in Puerto Rico
10 where electric infrastructure is located. And the
11 purpose of the testimony also is to highlight civil
12 society proposals to achieve environmental and
13 climate justice. There's more detail in the written
14 testimony.

15 More than four years after Hurricane
16 María, a cursory view of the electric system casts a
17 disappointing and potentially lethal tally. After
18 the hurricane, the centralized grid with its poles,
19 towers, wires, and substations largely running from
20 the big fossil-fired plants in southern Puerto Rico
21 through the central mountain range to the north --
22 especially to the San Juan metropolitan area -- was
23 stood up amid scandals of companies like Whitefish
24 and Cobra profiting handsomely from dubious work.

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1 Another company, New Fortress Energy,
2 built an LNG terminal to import highly volatile
3 methane gas that is frequently inoperable and was
4 constructed without the necessary authorization from
5 the Federal Regulatory Energy Commission --- I'm
6 sorry, from the Federal Energy Regulatory Commission
7 or an environmental justice analysis of how nearby
8 communities would be impacted by this new threat.

9 The Punta Lima Wind Farm was blown away
10 by the hurricane as was a utility scale land-based
11 solar array near where the storm made landfall. The
12 AES coal-fired power plant in Guayama continues to
13 spew toxins, contaminate the South Coast aquifer, and
14 adversely impact the largely Afro-descendant
15 population. The new grid operator, a joint venture
16 created by Quanta Services and ATCO Canadian
17 Utilities called LUMA Energy is lobbying to rebuild
18 the existing centralized fossil enabling energy grid
19 with a historic amount of FEMA and other federal funds
20 that perpetuates disproportionate impacts and
21 environmental injustice.

22 The Governor of Puerto Rico, while paying
23 lip service to renewable energy, continues to push
24 for the reconstruction of the 20th century system

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1 that overburdens nearby communities and has failed
2 after each hurricane in the past 30 years. Governor
3 Pierluisi, who took power with barely 32 percent of
4 the vote, is asking FEMA to hand over 9.6 billion to
5 rebuild the centralized transmission and distribution
6 grid and add new methane gas fired power plants, and
7 not one penny for renewables. In 2005, Congress
8 determined that rebuilding these lines over and over
9 was not a cost-effective strategy, and I cite,
10 "Electric power transmission and distribution lines
11 in insular areas, including Puerto Rico, are
12 inadequate to withstand damage caused by the
13 hurricanes and typhoons."

14 In contrast, civil society proposals put
15 forward by community, environmental, labor, and
16 professional organizations, academia and religious
17 congregations are calling on FEMA and PREPA -- the
18 Puerto Rico Electric Power Authority -- to invest
19 the historic amount of funds to provide lifesaving
20 distributed renewable energy -- primarily on-site or
21 rooftop solar and battery energy storage systems --
22 to enable Puerto Rican residents, businesses, and
23 institutions access to resilient power as set out in
24 the We Want Sun, "Queremos Sol," proposal.

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1 The proposed transformation of the
2 electric system would alleviate the load on poor and
3 largely Afro-descendant communities that are
4 overburdened by the centralized fossil-fired electric
5 system in Salinas, Guayama, Peñuelas, Guayanilla, and
6 parts of the San Juan metro area.

7 But Puerto Rico civil society proposals,
8 thus far, have fallen on deaf ears. The EPA Title 6
9 implementing regulations barred disproportionate
10 impact in addition to intentional discrimination. In
11 the administration of environmental programs such as
12 siting and enforcement, we ask this Commission to
13 urge the federal government to earmark the historic
14 amount of FEMA funds for on-site and rooftop solar
15 and battery energy systems and similar alternatives
16 to alleviate the burden of poor and largely Afro-
17 descendant communities close to the fossil-fired
18 plants.

19 We urge the Commission to investigate the
20 LUMA contract and the role of the Fiscal Oversight
21 and Management Board in its imposition of the LUMA
22 contract and in the electric crisis that we are
23 experiencing. The use of the historic amount of FEMA
24 funds allocated for the electric system will

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1 determine the viability of Puerto Rico for
2 generations to come and could be instrumental in
3 achieving environmental and climate justice in the
4 archipelago.

5 And so, you see, in terms of the electric
6 system, the request here is prospective. It's
7 because the FEMA funding is still pending, there has
8 not been a decision by the federal government, there
9 is still time for this Commission and others to weigh
10 in and influence the decision and have the
11 Biden/Harris administration fulfill its promises and
12 its commitments in, for example, Executive Order
13 14008, that require tackling the climate crisis and
14 also centering environmental justice so that the
15 communities near the plants that, as I mentioned,
16 are largely Afro-descendant communities, are not
17 overburdened by or continue to be overburdened by
18 fossil fuel generation. Thank you.

19 CHAIRWOMAN CANTÚ: Thank you very much,
20 Ms. Santiago.

21 We're now going to hear from Ms. Minet.
22 Please proceed.

23 MS. MINET: Good morning. I value the
24 opportunity to talk in this public briefing for the

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1 U.S. Commission on Civil Rights on the Civil Rights
2 Implications of Disaster Relief: Hurricane María in
3 Puerto Rico. I hope that this becomes a productive
4 forum in which we are not only heard, but that can be
5 linked to solutions to the problems and injustices
6 that are brought to your attention.

7 My name is Carla Minet. I am the
8 executive director of Centro de Periodismo
9 Investigativo, the Center for Investigative
10 Journalism, or CPI in Spanish. The CPI is a non-
11 profit organization celebrating 15 years of doing
12 incisive investigative journalism, training
13 journalists in Puerto Rico and the Caribbean, and
14 doing litigation for access to public records. We
15 have a team of five members, five journalists that
16 have been devoted permanently for the past four years
17 to investigating the recovery process after
18 Hurricanes Irma and María.

19 Given the time limits and that our
20 reporting for the past four years is available on the
21 internet and accounts for many civil rights
22 violations, I will focus today on very specific
23 backstage events that may give you an insight of the
24 challenges we have faced as journalists while

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1 investigating the recovery process that show systemic
2 problems we face given our colonial relationship with
3 the U.S.

4 In June 2020, the Health Department of
5 Puerto Rico said to the CPI that it handed over to
6 the local Emergency Management Agency information
7 about the number of electricity dependent persons in
8 each municipality that comes from the federal
9 database called Empower Map, so that it was given to
10 the mayors of these municipalities. But the
11 information shared did not include the names of the
12 patients or their addresses because, allegedly, this
13 information should be handed after the disaster
14 because of an MOA to protect private information,
15 Health Department said to CPI.

16 This is a huge contradiction with the
17 logic of preparedness and anticipating tragedies and
18 deaths, and like all protocols suggest moving people
19 that are dependent from electricity before a category
20 five hurricane hits.

21 CHAIRWOMAN CANTÚ: Ms. Minet, could you
22 pull the mask up a little bit?

23 MS. MINET: Up --- oh, I'm sorry.

24 In trying to understand how this

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1 information was gathered by the Federal Empowerment
2 Program, CPI journalist Eleva Martínez submitted a
3 Freedom of Information request to HHS on June 2, 2021,
4 including emails and letters in which the Empower
5 Program communicated to officials of the government
6 of Puerto Rico regarding the Empower Map platform;
7 dates of training events, and the names of Puerto
8 Rican public official participants; dates in which
9 the Empower Map team supported the Puerto Rico
10 Department of Health with situational awareness and
11 IT tools to identify electricity dependent
12 populations; and action reports and the corrective
13 action improvement plans for the program in Puerto
14 Rico and the U.S. Virgin Islands since January 2017
15 up to the production date.

16 HHS has denied our request for expedited
17 processing even though we are a press entity and
18 qualified and we were in the middle of the hurricane
19 season, which established the urgency. And until now,
20 HHS has not handed the information we requested,
21 violating all due process that is supposedly
22 guaranteed by FOIA.

23 In a separate effort, we filed another
24 FOIA request to the Department of Homeland Security,

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1 FEMA, dated February 26, 2021. We had interviewed
2 several FEMA employees at the Puerto Rico Recovery
3 office that had presented complaints regarding work
4 harassment and had said that nothing happened with
5 their superiors. In the FOIA, we were seeking
6 all the available disaggregated data presented in the
7 quarterly public report on complaints, notifications
8 about labor discrimination in FEMA for years 2015 to
9 2021, including the data on the origin of these
10 complaints broken down by FEMA region, state, and
11 territory. The information request was denied because
12 no responsive data was located. OER does not track
13 complaints this way, therefore does not maintain such
14 records.

15 A few months later, an audit by the
16 Department of Homeland Security Office of the
17 Inspector General analyzed 305 complaints about
18 sexual harassment. By evaluating 7,000 internal FEMA
19 documents dated 2012 through 2018, it found that FEMA
20 did not always adequately report and investigate
21 internal allegations of sexual misconduct, including
22 sexual assault, unwelcome sexual advances, and sexual
23 comments in its operation in the United States and
24 its territory. This information they used for this

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1 audit is exactly the kind of information we asked for
2 with the FOIA.

3 We persisted and filed another FOIA in
4 October 2021 requesting a breakdown of the places of
5 origin of the 3,005 complaints identified in the OIG
6 audit. Still, no response. In Puerto Rico we have a
7 constitutional right of access to information. Even
8 though it is far from being perfect, CPI goes to court
9 to file these kinds of petitions I just described,
10 and we usually get the information within weeks or
11 months.

12 In my view and experience, the problems
13 of getting information through FOIA are a real and
14 constant obstacle to our accountability reporting
15 regarding the recovery process. I've been to
16 conferences and workshops about FOIA in the U.S. and
17 I don't hear these stories from U.S. mainland
18 journalists. I have --- I will jump in.

19 Last but not least important, as you
20 might know, for the first time FEMA has applied to an
21 entire jurisdiction, Puerto Rico, a provision of the
22 Stafford Act on disaster and emergency assistance
23 that was included as an amendment after Hurricane
24 Sandy in 2013. Since then, it had only been applied

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1 to develop 258 projects in 28 states.

2 It was imposed on Puerto Rico government
3 officials by the Trump administration as our
4 reporter, Cristina del Mar Quiles, revealed a few
5 months ago. Section 428 allows for reconstruction in
6 a stronger and more resilient manner, but Section 428
7 states that if the cost increase after estimates are
8 approved, municipal governments are responsible for
9 the extra expenses incurred. In those cases, FEMA
10 will not disburse additional funds. This has become
11 a huge bump in the road, as some mayors have confirmed
12 to CPI.

13 Our request for interviews to agencies
14 like FEMA and HHS take weeks or more to be granted,
15 when granted, or we get generic and unclear
16 responses. We inquire about this issue. This is not
17 a wailing wall. It is a brief selection of the
18 challenges we have faced during accountability
19 reporting in the past years and shows, in my view,
20 the lack of empathy, the absence of urgency, and in
21 many cases, an absolute disregard by federal agencies
22 for Puerto Rican issues. Thank you.

23 CHAIRWOMAN CANTÚ: Thank you very much,
24 Ms. Santiago -- Ms. Minet.

1 Next, we will hear from Dr. Bonilla.
2 Please proceed.

3 DR. BONILLA: Hello. On behalf of Centro,
4 the Center for Puerto Rican Studies at Hunter
5 College, I thank you for the opportunity to present
6 oral testimony at today's hearing. We will be
7 submitting our written statement digitally following
8 today's procedures.

9 Centro is a research institute solely
10 dedicated to the study and interpretation of the
11 Puerto Rican experience. We did not work directly
12 with federal agencies in the management of disaster
13 aid, but we have been closely tracking the impact of
14 the storm and the challenges of recovery.

15 Since 2017, Centro has produced 13 data
16 reports and four annual assessments. We've documented
17 displacement after the storm, the housing crisis
18 provoked, and the impact of school closures. We also
19 organized major events in Puerto Rico and New York
20 and online oriented towards capacity building and the
21 formation of alliances across sectors.

22 Based on these activities, our main
23 recommendation is that it is imperative for FEMA to
24 adopt an intersectional approach to emergency

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1 management in Puerto Rico and beyond. This entails
2 paying closer attention to how various social and
3 demographic variables such as race, gender, age,
4 disability, and geographic location impact and
5 combine in ways that hamper both individual and
6 collective abilities to respond to disasters and
7 access federal aid. This also includes a necessary
8 recognition that inhabitants of U.S. territories face
9 particular barriers which require FEMA to develop
10 customized practices through local information
11 gathering such as the hearings today.

12 We would like to particularly highlight
13 the challenges faced by senior age populations and
14 disabled populations as well as those living in
15 particular geographic regions. In regards to seniors,
16 it is important to recognize that seniors face unique
17 vulnerability risk within Puerto Rico, including a
18 lack of family support networks due to adult children
19 not living in the same home or having migrated away
20 from Puerto Rico. They also have lower probability to
21 respond to disaster warnings due to lack of internet
22 access. There are also particular socioeconomic
23 characteristics regarding Puerto Rico's senior
24 population that are important to note.

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1 Please allow me to provide you with some
2 figures. In Puerto Rico, 22 percent of the population
3 is elderly, this is much higher than the U.S. average
4 of 16.5 percent. Forty percent of Puerto Rico seniors
5 live at or below the poverty line. This is again
6 disproportionately high, where in the 50 states the
7 poverty rate for seniors is only 9.4 percent overall
8 and 7.9 percent among Latinos. After Hurricane María,
9 at least one third of the senior age population
10 applied for aid.

11 By analyzing the data from FEMA
12 applications, we found that senior applicants had
13 disproportionately lower gross income levels relative
14 to the overall population. More than half of senior
15 age aid applicants reported less than \$15,000 as
16 their gross annual income. It should be noted that
17 since Hurricane María, the senior age population has
18 grown across municipalities. In other words, Puerto
19 Rico's population is becoming disproportionately
20 elderly, partly as a result of post-María
21 displacement.

22 Similar to seniors, people with
23 disabilities experience particular obstacles and
24 challenges in both the lead up and the aftermath of

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1 disasters and emergencies. Again, let me provide some
2 data points specific to Puerto Rico. Twenty-one
3 percent of our population is disabled. This is
4 significantly higher than the average for the 50
5 states, which is 12.7 percent. Half of Puerto Rico's
6 disabled population lives below the poverty line.
7 This is again statistically higher than the 50 states
8 where it is only 20 percent.

9 And these numbers have been increasing.
10 Since 2017, poverty rates for the disabled have
11 increased by 4.8 percent. Lastly, it is important to
12 note that Puerto Rico's disabled population is not
13 equally distributed geographically. Instead, there
14 are various pockets of disabled communities, mostly
15 in rural areas.

16 In our analysis of U.S. census data, we
17 found that there are areas where as much as 100
18 percent of the population reported a disability in
19 Puerto Rico. This is notably in the municipalities of
20 Yauco, Jayuya, and Orocovis, all of which are rural
21 areas.

22 Thus, I would like to end by calling
23 attention to the importance of geography. The impact
24 of Hurricane Maria was seen across the entirety of

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1 Puerto Rico. And yet, in our analysis, we found that
2 it was only in the San Juan area where the number of
3 aid applicants was proportionate to the population.
4 Numerous studies have attributed this to FEMA's
5 unfamiliarity with Puerto Rico's terrain beyond urban
6 centers.

7 It is worth noting that this is
8 particularly concerning given the spatial
9 concentrations of vulnerable communities in rural
10 areas, as noted above. By creating barriers to access
11 in rural areas, FEMA is also creating barriers for
12 the elderly, the disabled, and other socially
13 vulnerable populations.

14 Lastly, I want to call attention to how
15 living in a U.S. territory as opposed to a U.S. state
16 inherently creates disproportionate access to aid. As
17 numerous studies and previous panelists have argued,
18 the federal response in Puerto Rico was overall
19 slower and smaller in scale to what was seen after
20 Hurricanes Harvey and Irma in Texas and Florida
21 during the same period.

22 It places under the category of geography
23 because in previous legal proceedings other branches
24 of the federal government have argued that Puerto

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1 Ricans are not the victims of discrimination based on
2 race or ethnicity, given that when they migrate to
3 the 50 states, they have full access to the rights
4 and entitlements of U.S. citizens. However, it is
5 obvious that the residents of this U.S. territory are
6 disproportionately of Puerto Rican descent. And thus,
7 the lack of access to adequate aid in this particular
8 geography must be understood as a form of ethnic
9 discrimination rooted in the United States' colonial
10 history and imperial presence.

11 In closing, I urge federal, state, and
12 local agencies to adopt an intersectional approach to
13 questions of accessibility and to pay greater
14 attention to how residing in a U.S. territory
15 predisposes populations to experience barriers to
16 federal aid.

17 Indeed, I ask if this federal commission
18 gave enough attention to the particular challenges
19 involved in preparing testimony in English and in
20 educating the public about their right to testify and
21 attend these hearings in a context where civil
22 society is overtasked with filling the gaps of
23 ineffective government response to our ongoing
24 disasters, including not just hurricanes and

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1 earthquakes, but also the fiscal crisis and our
2 ongoing pandemic. Thank you.

3 CHAIRWOMAN CANTÚ: Thank you, Dr. Bonilla.

4 We will now hear from Ms. Torres Rivera.
5 Please proceed.

6 MS. TORRES: Good afternoon, thank you all
7 the Commission for the invitation to participate on
8 this public briefing, and I also want to recognize
9 the all-women panel that is right now at this public
10 briefing.

11 I am the executive director of the
12 Fundación Fondo de Acceso a la Justicia, or Access to
13 Justice Fund Foundation. It's a non-profit foundation
14 in Puerto Rico that provides funding to diverse non-
15 profit organizations to offer free legal services on
16 civil matters to low-income and vulnerable
17 communities. After Hurricanes Irma and María, our
18 foundation created a legal emergency fund with the
19 purpose of providing free legal assistance to
20 disaster survivors, particularly low-income
21 families, that were in imminent need of housing
22 assistance.

23 Currently, we have impacted 15,000
24 families in Puerto Rico. We subsidized over 20 non-

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1 profit organizations and employed over 65 attorneys
2 and notaries at law that worked in legal brigades
3 throughout the 78 municipalities of Puerto Rico
4 helping, specifically, with FEMA applications,
5 affidavits, and eventually, letters of appeal. What
6 we saw was that 65 percent of our participants were
7 women, 78 percent were elders, specifically over 60
8 years old.

9 But we wanted to highlight, because of -
10 - because we are a foundation that has to do with
11 legal services, we wanted to highlight specifically
12 what we encountered through our experience with our
13 legal projects. One of the significant discriminatory
14 practices that we saw from FEMA was the denial of
15 specifically 85,000 individual assistance
16 applications because of the alleged lack of home
17 ownership. To this day, we -- it is unclear why and
18 how so many cases were denied because of the reason
19 people were not able to prove ownership. And after
20 some legal evaluation from our projects, our
21 attorneys concluded that it was an arbitrary and
22 discriminatory decision-making process from FEMA.

23 During that time, our foundation
24 collaborated with attorneys from Texas, from Texas

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1 Access to Justice Foundation and other attorneys from
2 New Jersey, both having the experience of Hurricane
3 Harvey in Texas and Sandy in New Jersey, and I always
4 remember them telling me that in Puerto Rico they
5 were -- FEMA was requesting people so many documents,
6 and it was such a different process from Texas and
7 New Jersey, from what it is supposed to be the process
8 of requesting documents. Specifically, because the
9 Individual and Household Program Unified Guidance at
10 that time had a definition of ownership and
11 exceptions to document presentation that never
12 obligated for people to have a formal property title.

13 And I also wanted to highlight this
14 meeting in 2018 at the University of Puerto Rico Law
15 School where there were high level FEMA officials.
16 When I presented this issue about denials of land
17 tenure or property title, I remember they were
18 telling me that they don't know why it was an issue
19 in Puerto Rico because they had previous experience
20 from other U.S. territories or jurisdictions with
21 indigenous and tribal lands, and they made
22 exceptions, and they applied correctly their
23 guidance.

24 So, they didn't -- they expressed that

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1 they didn't understand why it was such a big issue in
2 Puerto Rico. But it was, and a lot of people were
3 denied their right to have that assistance to repair
4 their homes. So, we had a very disproportionate
5 denial rate in that sense. And I wanted also
6 to highlight something that Ariadna Godreau mentioned
7 at the beginning, since she also was dealing with the
8 legal brigades. When the Office of the Chief Counsel
9 and FEMA approved that the sworn statement -- that it
10 was basically this very simple 1-2 page document that
11 included different legal scenarios, specifically
12 about ownership, land tenure, it wanted to
13 accommodate the social and legal context of the
14 people in Puerto Rico. So, we thought it was the right
15 thing to do, so we were so happy when FEMA approved
16 that. But I just wanted to reiterate, like Ariadna
17 was mentioning, they didn't have -- they didn't make
18 that document available at the Centers for Disaster
19 Recovery. They didn't notify any of the 85,000 people
20 that were denied because of ownership that there was
21 a new possibility to appeal with that document, and
22 it was a real possibility for that. So, we encountered
23 constant obstacles and challenges from FEMA to -- we
24 thought that it was sort of like this active action

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1 and discriminatory action so that people wouldn't
2 actually appeal because of the ownership.

3 So, what we did was a new campaign across
4 the island, helping people, again, with legal
5 brigades. We had to include psychological
6 professionals in our legal brigades because the
7 anxiety and the emotional distress that these FEMA
8 denials were causing on people were very real. We had
9 participants that expressed constantly suicidal
10 thoughts, and we even had a participant that
11 committed suicide. And I wanted to say this because
12 when FEMA denies an assistance, it impacts people,
13 but it also has the effect of killing people. It's
14 something real. We saw it in our legal projects. It's
15 not something that -- it's invented, right, it has a
16 consequence.

17 I'm running out of time. I want to
18 respect the time. But we continue to see the
19 discriminatory practices after the earthquakes on
20 January 2020. We have all the details of what we saw
21 on our written statement. But I wanted to also
22 highlight that one of the biggest obstacles that we
23 confronted as well with FEMA is the lack of
24 transparency and access to information.

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1 We wanted to have information from all
2 the 78 municipalities of the denial rate so we would
3 target our legal aid and be more effective. It was
4 really, really hard to get that information. They
5 don't have a dashboard, it's not accessible. So I
6 wanted also to highlight that as a part of the civil
7 rights discussion. And thank you.

8 CHAIRWOMAN CANTÚ: Thank you, Ms. Torres
9 Rivera.

-END OF PANEL 2-

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QUESTION & ANSWER

9

10 CHAIRWOMAN CANTÚ: So, at this point in
11 our panel, it's the most fun part. It's the question
12 and answer. So, I'm looking to our commissioners to
13 see which types of questions or what kind of
14 information they would like to go over. Okay,
15 Commissioner Adams, please.

16 COMMISSIONER ADAMS: Thank you all very
17 much for your time.

18 My question, first one is to Ms. Aubert,
19 Ms. Rivera, I think, could you help me understand --
20 you talked about the property issues. Is there a
21 procedure here where you have a local property tax
22 some way where homeowners or people on the land are
23 paying taxes, and did FEMA not accept any evidence of
24 that as evidence of ownership?

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1 MS. GODREAU: As per the guidelines that
2 were already in place for the individuals and
3 household program, as Diane Yentel was saying, there
4 was already like a way to prove ownership that
5 included what you're just mentioning, like payment of
6 taxes or receipts. But when FEMA came on the ground,
7 even though the CFR stresses like a very broad
8 definition of owner, they were asking precisely for
9 deeds, title deeds.

10 And, as I said before, nothing in Puerto
11 Rican law requires that and nothing in federal law
12 requires that. And I must say that this is an awful
13 precedent because since FEMA did this in practice,
14 the Puerto Rican Housing Department implemented the
15 same restriction, a self-imposition, for the CDBG-DR
16 funding. So, we are seeing the same thing that we saw
17 with FEMA, the same thing that took us three years to
18 fight in the CDBG-DR program. So, you know, this is
19 snowballing.

20 MS. TORRES: I completely agree with what
21 she's saying and I just wanted to add that we always
22 and constantly, in our different meetings with FEMA
23 staff, with high level representatives from FEMA, we
24 met with them locally and even went to the United

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1 States a couple of times because of this issue. And
2 we constantly explained to them that Puerto Rico has
3 a Spanish tradition, a civil Spanish tradition when
4 it comes to law.

5 We wanted -- we explained to them the
6 complexities of just that, of having those laws, it
7 didn't work as it works in the U.S., and so it's
8 different here because of our law tradition. But
9 also, there's a historical context of land tenure in
10 Puerto Rico, and our foundation even commissioned a
11 study, a socio-legal study, to try to explain why
12 it's so different in Puerto Rico.

13 For example, people are not obligated to
14 have their titles registered in the Property
15 Registry. It's not an obligation. So, it was very
16 frustrating because we constantly explained this. And
17 what blew our minds was that not only the attitude
18 was as if they didn't want to understand, they didn't
19 want to deal with it, but the guideline had an
20 exception anyways, they weren't supposed to ask for
21 the title anyways. So that was very mind blowing for
22 us, the insistence of them asking for that type of
23 formal document here in Puerto Rico.

24 COMMISSIONER ADAMS: Question for Ms.

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1 Santiago. You talked about the -- you advocated for
2 distributive generation; I think. I mean, my question
3 is, do you think that's more economically efficient
4 than having an infrastructure like you have now? And
5 secondly, what would be more likely to enjoy a capital
6 infusion the next time that there's storm damage,
7 would it be the status quo or would it be distributed
8 generation?

9 MS. SANTIAGO: Thank you for the question.

10 Distributed renewables, renewable energy
11 in general, according to Lazard and other financial
12 analysts, are now the cheapest way to generate
13 energy. They're cheaper than new gas-fired power
14 plants. And the specific situation in Puerto Rico and
15 in other areas that are prone to hurricanes is that
16 distributed renewables work better, are more
17 resilient, and require less reconstruction, which is
18 what Congress was saying.

19 The way the electric system is configured
20 in Puerto Rico, there are lots of power plants in the
21 southern coastal areas and there is a whole gamut of
22 transmission and distribution lines that run from the
23 south to the north, mostly San Juan. That happens to
24 be right in the path of hurricanes.

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1 Hurricanes come in through the east,
2 cross across the island, and take down the
3 transmission lines in the past 30 years. I mean, since
4 Hurricane Hugo, I remember. Usually it's part of the
5 island, not the whole thing, the way it happened after
6 Hurricane María. But certainly, yes. Those lines,
7 that design, is a very 20th century configuration.
8 And the investment of federal funds should go towards
9 something more resilient that will hold up after the
10 next storms.

11 And what we're seeing, very
12 interestingly, another equity and environmental
13 justice issue, is that people at higher income levels
14 here are rapidly taking up these systems. But it's
15 such a small part of the population, with the high
16 poverty rate here, that lower- and middle-income
17 people -- that of course correlates with race here -
18 - do not have access to that universal essential
19 public service through rooftop solar or on-site
20 solar, something nearby that is not as impacted by
21 hurricanes and storms.

22 There have been studies, DOE, recently
23 civil society organizations like Cambio, IEEFA that
24 show the viability, the cost effectiveness of these

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1 rooftop solar systems in comparison to rebuilding the
2 grid. And I want to point to an analogy here, so if
3 you order something online and have it delivered, you
4 probably don't expect to pay more for the delivery -
5 - much more, 10 times more for the delivery -- than
6 the content of your package.

7 That is what the government of Puerto
8 Rico and FEMA are considering doing, paying to
9 rebuild the transmission and distribution system to
10 the tune of the already allocated 9.6 billion. And
11 they're asking for up to 14 billion, and plus adding
12 new gas-fired plants as opposed to providing the
13 energy more directly. You can avoid that whole
14 transmission cost by providing the energy on
15 rooftops, or more locally sited. I hope that answers
16 the question.

17 COMMISSIONER ADAMS: Thanks.

18 CHAIRWOMAN CANTÚ: Commissioner Kladney,
19 please.

20 COMMISSIONER KLADNEY: Thank you, Madam
21 Chair.

22 Dr. Bonilla, I think I said it right. I
23 am so bad. Bonilla. Anyways, has the Puerto Rican
24 government or FEMA -- maybe this is for everybody --

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1 ever conducted a complete inventory of projects that
2 would mitigate damage during a catastrophe like a
3 hurricane? And if not, would that help?

4 DR. BONILLA: Has the government conducted
5 -- can you say that again? I'm sorry.

6 COMMISSIONER KLADNEY: An inventory of the kind
7 of projects that are needed, like in these small
8 towns, to mitigate damage that would occur during a
9 storm.

10 DR. BONILLA: No. There's been some
11 studies, but it's not been exhaustive. I don't know
12 what the other panelists would say, but not that I'm
13 aware of, no.

14 COMMISSIONER KLADNEY: Would that help?

15 DR. BONILLA: I think so, absolutely. Yes.

16 MS. GODREAU: That's one of the duties
17 that COR3 had along the process, like to have an
18 inventory of the mitigation plans available, and
19 incoherent planning is part of unjust recovery. One
20 of the things that happened is that planning
21 processes, for example, within CDBG-DR, they haven't
22 even started. So, you're already pushing people for
23 relocations, for giving out contracts, a revolving
24 door between the FEMA STEP program and the CDBG-DR

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1 program. But their planning process, the millions
2 allocated for the planning process, that program
3 hasn't started. So, to answer your question that
4 updated inventory, we're lacking it because of local
5 governmental omission to do so, and also because the
6 way that the funds are being spent locally is not
7 coherent.

8 MS. TORRES: I just wanted to add that we
9 recognize that the government of Puerto Rico and the
10 U.S. government has a responsibility to develop these
11 plans and mitigate, but we also wanted to recognize
12 that those plans have to be with the communities.
13 It's --- a planning to get--

14 COMMISSIONER KLADNEY: Input

15 Ms. Torres: Right, not only the input, an
16 active participating process. COMMISSIONER KLADNEY:
17 Right.

18 MS. TORRES: Right? So, when governments
19 start contracting -- and we know, we recognize the
20 responsibility, but it cannot be just an up/down
21 initiative. It has to be --

22 COMMISSIONER KLADNEY: Right. Right.

23 MS. TORRES: Right? Just wanted to clear
24 that, right? Okay.

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1 COMMISSIONER KLADNEY: And another
2 question, since the hurricane, has FEMA come here and
3 conducted an investigation as to how it performed
4 during the investigation? Has it gone from community
5 to community to see what happened and to see how it
6 could be better prepared next time?

7 MS. GODREAU: Not that we know of.

8 DR. BONILLA: There was an internal
9 assessment of some practices, but I don't believe it
10 involved coming to Puerto Rico and talking to local
11 stakeholders. I think it was just an internal -- and
12 also, in particular, looking at how during the past
13 administration there were specific directives given
14 to slow down certain processes, as I believe the
15 panelists in the morning panel discussed.

16 COMMISSIONER KLADNEY: Have you ever seen
17 that document?

18 DR. BONILLA: I've seen news reports about
19 it. I've not personally received the document.

20 COMMISSIONER KLADNEY: And you don't know
21 what it was called.

22 DR. BONILLA: No.

23 COMMISSIONER KLADNEY: I mean, I'm trying
24 to find out because we can request a copy if it's an

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1 internal assessment that was done regarding María.

2 DR. BONILLA: I don't have it at my
3 fingertips, but I can submit news reports that
4 discussed it.

5 COMMISSIONER KLADNEY: Thank you very
6 much.

7 MS. TORRES: I remember that, I think two
8 weeks ago, I received an invitation, and my emergency
9 legal aid coordinator virtually attended, from FEMA.
10 It was like a conference of revising internal
11 practices. And she actually -- it's included in the
12 written statement some of the changes they are
13 internally making, and we applauded, and we think
14 that those changes are good. They are coming four
15 years later, people died and left, and that's
16 obviously an issue. But I think it was about two weeks
17 ago, I can search for the information as well and
18 send it to the Commission.

19 COMMISSIONER KLADNEY: And perhaps a
20 contact at FEMA that we could get ahold of. If you
21 had a person there, they would probably know who to
22 contact?

23 Ms. Torres : Yes.

24 COMMISSIONER KLADNEY: Thank you.

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1 Yes, ma'am.

2 MS. MINET: Yes. I just wanted to say that
3 there are many OIG audits that went out, FEMA's
4 problems and HHS' problems, so there are lots of them.
5 And CDBG also had audits, so they should be revised.
6 And I hope FEMA local office is watching. I guess
7 they should be here. But many of these concerns have
8 been reported extensively in local press.

9 So it's not that they are not aware of
10 these problems because they -- at least we at the
11 center -- and I know many of these organizations have
12 submitted press releases during all this time, and
13 they should know about their failures.

14 COMMISSIONER KLADNEY: Right. I just
15 wanted to know if they were looking at it themselves
16 to make change. I mean, you could know about
17 something, but if you don't look at it yourself.

18 Yes, ma'am.

19 DR. BONILLA: I just want to point out to
20 the Committee, there is a 300-page report published
21 October 2018 by FEMA called Mitigation Assessment
22 Team Report Hurricanes Irma and María in Puerto Rico
23 Building Performance, Observations, Recommendations,
24 and Technical Guidance.

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1 COMMISSIONER KLADNEY: Thank you very
2 much.

3 COMMISSIONER YAKI: Thank you.

4 I want to spin around on the whole title
5 issue. It was brought up in the first panel and I
6 want to get some specificity to sort of -- well,
7 because we'd like that for the record. A couple of
8 things. One, when did you first bring -- this is, I
9 guess, for both Ms. Aubert and Ms. Rivera. When did
10 you first bring to the attention of FEMA the issue
11 that they should not be just relying on deeds for
12 applications for housing assistance as a result of
13 Hurricane María?

14 (Pause.)

15 COMMISSIONER YAKI: I think the mic ---
16 okay. Hit it. A little bit harder. There you go.

17 MS. GODREAU: Okay, so, I finally did it.
18 If tech fails us amidst the pandemic, it's done, so
19 we have to go home, right?

20 (Laughter.)

21 MS. GODREAU: So, I have, considered this
22 on several occasions. So just like Ayuda Legal Puerto
23 Rico brigades started literally 24 hours after the
24 disasters, and we trained 400 lawyers and attorneys.

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1 We trained all of the legal service entities that
2 were out there, so we were a huge group. We started
3 noticing this, I would say, like a week or two weeks
4 after Hurricane María, when FEMA officials on the
5 phone told us, "Why don't you get an instant title?"
6 And we were like, "I don't know what's an instant
7 title." And they said, "That's something that they
8 had in New Orleans. Why don't you have it?" And we
9 were like, "Okay. This is not working."

10 If you hung up, somebody else would tell
11 you another and another thing. I must say that three
12 weeks into --- after María, a FEMA official told the
13 people in Loíza, the mayor of Loíza, "You know what?
14 You can use this form so that people who don't have
15 title -- it's something that we prepared. They can
16 use it."

17 And we went to Loíza, and we filed 1,000
18 applications, literally, in a day with a lot of pro
19 bono attorneys, and all of those forms were denied.
20 And then FEMA denied the fact that they gave the mayor
21 that form, so that happened over and over again. So,
22 FEMA knew since the beginning that this was an issue.

23 COMMISSIONER YAKI: Okay. And how much
24 later did it take for them to concede in that meeting

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1 with you that they would accept the substitute
2 verification, which was always within their
3 discretion to do?

4 MS. Torres: So that document was approved
5 on June 2018.

6 COMMISSIONER YAKI: Like a year later.

7 MS. Torres: More or less. Yes. It was.
8 Yeah. But I have to say that we truly appreciated
9 that the Office of the Chief Counsel designated this
10 attorney that met with Ayuda Legal and our foundation
11 and other nonprofits to finally approve this. And we
12 truly appreciated it. But not only did -- it was an
13 approval that came almost a year later, but it wasn't
14 effective because it wasn't available. It wasn't
15 accessible.

16 COMMISSIONER YAKI: Well, let me ask you
17 this. Did FEMA ever tell you after that -- after the
18 nine-month period and after they approved the true
19 form -- that everyone who was denied previously could
20 reapply?

21 MS. Torres: There was nothing written.
22 Maybe that attorney could say, "Listen, tell people
23 to appeal again." I remember some of our attorneys in
24 our projects telling us that at the DRCs, some of the

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1 staff at -- a low level staff in the DRCs would tell
2 our attorneys, "they could appeal with an affidavit,
3 with a notarized affidavit from a notary-at-law in
4 Puerto Rico, which has to be a lawyer, different from
5 the U.S.

6 COMMISSIONER YAKI: Yes.

7 MS. Torres: And we started -- all our
8 legal brigades had -- one of the requisites of being
9 on those legal brigades were that they should be
10 notaries-at-law because the way -- the conversations
11 led to that. But eventually, we saw that all those
12 appeals with those affidavits were also denied.

13 COMMISSIONER YAKI: What?

14 MS. GODREAU: Yes. So, it was that then
15 the sworn statement was approved. And also, many
16 applications were also denied. So ---

17 COMMISSIONER YAKI: So, they gave you
18 something, but it really hasn't resulted in anything.
19 And they haven't said anything publicly about whether
20 they would, basically, wipe out the old denials and
21 let people reapply again? Because I'm sure they would
22 say there's some kind of time limit or something that
23 you -- I don't know. What's going -- so you're shaking
24 your head, so just tell me.

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1 MS. GODREAU: Because it never became an
2 official guideline. It was until, I would say -- and
3 part of my staff is here -- in October that it finally
4 became a guideline. Because what FEMA said is that -
5 - they sent us a letter saying, "Yes. The form is
6 okay. But now, please, nonprofits, do go out and tell
7 people." So, we were lacking also coordination from
8 the local government. There was no way that we could
9 get the names of the 1,001 million applicants. And
10 since it wasn't a policy, there wasn't even an
11 internal procedure. And we trained FEMA staff on the
12 informal title form, and it was the first time that
13 they --

14 COMMISSIONER YAKI: So, they have the
15 names of everyone who got denied.

16 MS. GODREAU: Yes. They should.

17 COMMISSIONER YAKI: So, they could easily
18 send out or give you the list.

19 MS. GODREAU: Sure.

20 COMMISSIONER YAKI: But they haven't done
21 that.

22 MS. GODREAU: They should notify people
23 because of due process.

24 COMMISSIONER YAKI: Can you send us where

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1 that new guideline is finally?

2 MS. GODREAU: Yes.

3 COMMISSIONER YAKI: And then the person
4 who you met with at FEMA about this?

5 MS. GODREAU: Mm-hmm.

6 COMMISSIONER YAKI: Okay. Thank you.

7 CHAIRWOMAN CANTÚ: Yes.

8 COMMISSIONER ADEGBILE: Hi. I just want to
9 pick up on this topic again. So, as I understand it,
10 FEMA was implementing as a practice, not as a legal
11 requirement, but as a practice, proof of title in a
12 situation where it was known that many people would
13 not have a title. Now, FEMA's own guidance does not
14 require a title. The guidance that was in place at
15 the time that the hurricane happened does not require
16 a title. Is that right?

17 MS. TORRES: Yes. Correct.

18 COMMISSIONER ADEGBILE: So, at the time
19 the hurricane happens, FEMA's own guidance does not
20 require a title, but FEMA requires that when they're
21 looking for eligibility; rejects a lot of people's
22 requests, 85,000 approximately. Is that correct?

23 MS. TORRES: Yes.

24 COMMISSIONER ADEGBILE: And you engage

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1 FEMA when you understand that this is happening, and
2 come up with an additional alternative, the form that
3 you talk about. But FEMA -- is that --- we have that,
4 right?

5 MS. TORRES: Yes.

6 COMMISSIONER YAKI: Nine months later.

7 COMMISSIONER ADEGBILE: Nine months
8 later? And, however, FEMA takes no responsibility for
9 communicating the alternative paths to demonstrating
10 eligibility, knowing that 85,000 some odd have been
11 denied, correct?

12 MS. TORRES: Correct.

13 COMMISSIONER ADEGBILE: And requires the
14 not-for-profit community to take onto its back the
15 responsibility of trying to disseminate that. In
16 effect, there is a structural process of improper
17 denials, and there's another approach here. But
18 because of the passage of time, many people have lost
19 faith in -- and having heard so many different
20 articulations of what's necessary, many people have
21 lost faith in that any additional effort is ever going
22 to create a possibility of them having assistance. Is
23 that correct?

24 MS. TORRES: Correct. We even had some

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1 participants in our project that had three, four,
2 five times presented letters of appeal, and the five
3 times were denied.

4 COMMISSIONER ADEGBILE: Has this degree of
5 denial ever happened in another place that you are
6 aware of? I understand that you are not all
7 professional investigators of FEMA, but we have heard
8 that there have been other contexts in which the title
9 issue has presented itself. Are we aware that there's
10 ever been this magnitude of denial in the wake of a
11 natural disaster in other places?

12 MS. MINET: I just wanted to say that we
13 had to go to court for a FOIA petition in 2019 for
14 exactly the database of the FEMA denials for
15 individual assistance. Since then, we are still in
16 court with FEMA for this information. We -- they have
17 been feeding us with irrelevant information, but
18 still this database has not been produced.

19 COMMISSIONER ADEGBILE: So, in light of
20 what we have described here and reviewed with you,
21 can you think of explanations for why FEMA is
22 proceeding in this way?

23 MS. GODREAU: Yes. I did it. So, yes. So,
24 there is a piece that has been widely studied in other

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1 jurisdictions that have been disaster stricken that
2 has to do with disinvestment, you know, and the way
3 that disasters promote disinvestment of low-income
4 black communities everywhere. So, as Diane Yentel was
5 saying, this has also happened in jurisdictions as
6 New Orleans, post-Katrina, with people with informal
7 titles and more recently, with people with mobile
8 homes in Texas.

9 So, the things that we were listening
10 from FEMA, from high level FEMA officials -- and we
11 have been more recently through HUD listening
12 sessions in civil rights too, which are like very, of
13 course, linked -- is that there was like a perception
14 that people in Puerto Rico were going to take the
15 money. That idea based on the fact that we were going
16 to spend public funds without accountability, public
17 fraud, and whatnot. And we have been listening to the
18 same things over and over again in the past
19 administration and even in this administration. So,
20 there is a reading, a racial reading of the people
21 who are benefiting from assistance where there is
22 this idea that these people are going to commit fraud.

23 Now that we are going through recoupment
24 processes -- and that's another thing regarding FEMA,

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1 we have people undergoing recoupment process because
2 they were unable to prove ownership, although they
3 did based on the existing guidelines. So, there is a
4 dominant imagery of the way that Puerto Ricans have
5 related that was expressed in social media widely by
6 the former president of the U.S.

7 DR. BONILLA: Can I add something?

8 COMMISSIONER YAKI: Sure.

9 DR. BONILLA: First, I was looking through
10 my phone to try to find some statistics, but I will
11 submit them later about -- you know, at the end of
12 the day, what percentage of Puerto Ricans actually
13 received aid. After all, I don't know if the
14 Commission has that, but it's in the single digit
15 percentages. And then of that percentage, what
16 percentage received the maximum allowable amount, and
17 it was about 1 percent or less.

18 And I do think that what Ariadna is
19 saying, this is actually a research question that we
20 need to look into to see if this is unique to Puerto
21 Rico. And as she's saying, we need to also look not
22 just at different places, but at specific populations
23 within those places and how these denials and
24 barriers to aid are disproportionately distributed.

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1 And this is not research that we've yet done at
2 Centro, but we -- if the Commission wishes to
3 commission us to do that, we would be happy to provide
4 further -- look into this further and provide our own
5 internal investigation upon this.

6 COMMISSIONER ADEGBILE: Certainly, any
7 information --- comparative information about denials
8 and the demographics of the populations would be
9 valuable, I think, for purposes of our investigation
10 and for FEMA going forward.

11 Just to be clear, the guidance that we've
12 been talking about and referring to, is that an
13 interpretation of Stafford Section 408? I'm trying to
14 figure out -- I'm trying to trace back to what the
15 applicable law is that FEMA is implementing with this
16 guidance.

17 MS. GODREAU: It's 44 CFR 2016 -- 216.
18 Sorry, 44 CFR 216. I am confident that if I'm
19 mistaken, the team will scream.

20 (Laughter.)

21 COMMISSIONER ADEGBILE: Ms. Rivera, were
22 you trying to get in on that as well?

23 MS. TORRES: Yes. It is that part.

24 COMMISSIONER ADEGBILE: And just for the

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1 clarity of the record, as far as we understand it,
2 the statute itself doesn't speak to a title
3 requirement.

4 MS. GODREAU: What the statute does is to
5 define who's an owner, and it goes into saying that
6 an owner is somebody who has a proprietary interest,
7 it's a person who makes repairs and whatnot. And what
8 we did in the form was to mix that with local law to
9 demonstrate what a proprietary interest would look
10 like using the local legal framework. And we even
11 presented several white papers to FEMA as the legal
12 analysis for that.

13 COMMISSIONER ADEGBILE: Which, as I
14 understand it, is another way of saying that the
15 statute itself does not require title expressly.

16 MS. GODREAU: Never.

17 COMMISSIONER ADEGBILE: Okay. Thank you.

18 MS. ROSARIO: If I may, I just wanted to
19 echo my fellow partners on this panel, but I just
20 wanted to add that -- to the point of what Dr. Bonilla
21 was saying and to the fact that Carla Minet is
22 highlighting that we don't have the data yet. But we
23 do have the hands-on experience on the field to know
24 that women - particularly, Afro-descendant women and

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1 elderly women -- were disproportionately affected by
2 this because of how in Puerto Rico homeownership is
3 disproportionately in the hands of men, formal
4 homeownership. We don't have the data to prove it,
5 but I would think that analysis with hard data from
6 organizations in the field can provide enough data to
7 support that.

8 CHAIRWOMAN CANTÚ: And every research
9 project always has suggestions for further research,
10 but this particular issue is also an issue of call
11 for action. If you just differentiate both and let us
12 know which ones you believe the research is complete
13 and which ones you think require further research.

14 Commissioner Adegbile, you have any more
15 questions?

16 COMMISSIONER ADEGBILE: I'm sure I do, but
17 I'm happy to yield to others.

18 CHAIRWOMAN CANTÚ: Commissioner Adams,
19 would you like to ask a question?

20 COMMISSIONER ADAMS: Thank you, Madam
21 Chair. Most everyone on the last panel testified that
22 these problems that happened are interwoven with
23 political status, to one degree or another. In fact,
24 Ms. Aubert, your testimony talks about the colonial

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1 condition having something to do with this.

2 My question is you all must have thought
3 about how status and different political status might
4 have made the situation better or worse, and I'm
5 wondering would, for example, Ms. Aubert, would
6 independence have made the situation better or worse?
7 What is the interplay with status and these problems
8 in your view?

9 MS. GODREAU: So, a lack of democracy is
10 at the core of everything that Puerto Rico has gone
11 through and is going through? At the same time, I
12 want to say, very briefly, that as a human rights
13 lawyer and a person that defends self-determination,
14 I resent the fact that colonialism becomes so hyper
15 visible, and every time that we want to speak about
16 any other civil rights violation, we end up on the
17 status question and playing that ball in the field of
18 Congress.

19 And that being said, yes, of course, the
20 colonial conditions are imbedded in everything that's
21 going on. For example, what we're talking about,
22 these economic and social rights. And when we talk
23 about economic and social rights, I always remind
24 myself that the Constitution that Puerto Rico has,

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1 when we're talking about civil rights, when we're
2 talking about that contract between the government
3 and the people, has been denied of a clause that
4 defends economic and social rights because the U.S.
5 Congress decided to ban that clause as a condition to
6 let Puerto Ricans have the political status that they
7 have today. So, the will of the people is to defend
8 what we do every single day, housing justice, land
9 justice, economic justice, health, labor laws, and
10 that has been taken away from us.

11 PROMESA, the imposition of an unelected
12 board that is basically deciding over fiscal policy,
13 and that's making the decision of who gets to stay in
14 our land. The question that we have right now,
15 Commissioner Adams, is the future. The possibility of
16 staying here, and we are being taking-colonialism not
17 only takes that away from us, but we are invisible.
18 When we go to the InterAmerican Commission of Human
19 Rights, and we have gone on several occasions -
20 yesterday, one of the leaders was talking about it.

21 Those are the only forums, few of them,
22 where we have representation at international levels,
23 because the colony that is not acknowledged by the
24 United Nations because the U.S. has denied that right

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1 over and over on several occasions, is invisible.
2 Invisible. So, talking about civil rights, talking
3 about human rights is very far removed often from the
4 policy work and the policy space that the colony lets
5 us have. So yeah, we have to solve the colonial
6 status. Yes, that's an international responsibility.
7 But yes, the U.S. and the local government that has
8 been complicit of the colonialism status, has to
9 repair - to provide reparations for the people that
10 are currently asking themselves -ourselves, every
11 single day, is future in Puerto Rico even possible.

12 MS. SANTIAGO: Can I add very briefly to
13 that? And I think that if the question is would the
14 FEMA assistance under independence, how would it be
15 better or worse, I think that depends on the
16 conditions on which independence would be negotiated.
17 We all know that after the Treaty of Paris and the
18 ceding of Puerto Rico as a territory to the United
19 States that there are possibilities of renegotiating
20 that status issue. And the terms of that
21 renegotiation would determine whether the FEMA
22 funding or any other kind of federal funding would
23 serve as some form of reparations for the colonial
24 status that Puerto Rico is under with respect to U.S.

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1 I also, if I may, just address briefly
2 also another issue which has to do with FEMA as a
3 responsive agency or lack of response from FEMA to
4 FOIA requests. We've also experimented that for over
5 a year requesting documentation from FEMA and not
6 getting one sheet of paper. With a multiple team of
7 lawyers, including Earth Justice, the University of
8 Puerto Rico Law Clinic, and other attorneys that
9 we're working with, no response to FOIA requests from
10 FEMA. Thank you.

11 DR. BONILLA: First, in my statement, what
12 I emphasized was the need for federal agencies to
13 take an intersectional approach. And what I meant by
14 that was echoing what my colleagues are saying, that
15 we can't set us apart, the question of status, from
16 these other issues. And so that's part of why I also
17 emphasize that the discrimination that people in this
18 geographic area face is an ethnic discrimination that
19 needs to be understood in relationship to other
20 ethnic discrimination and racial discrimination that
21 occur in the United States.

22 I also want to emphasize that an
23 intersectional approach also looks at how these
24 issues are compounded, and so issues related to

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1 gender justice, racial justice, they need to also be
2 thought about in terms of colonial injustice, and how
3 each of these deepens and strengthens each other. And
4 in the case of the FEMA response, if we understand
5 that the compounding effects of these disasters and
6 of these inequities only sharpen these divides, then
7 we have to understand how FEMA's response is not just
8 discriminatory, but actually leads to an increased
9 lack of justice for these communities. As such, it
10 has hardened the divisions of race, gender, class,
11 and colonialism in Puerto Rico. And so, all of these
12 things need to be thought about together.

13 And also, I want to echo what my
14 colleague, Ruth Santiago, just said about the need to
15 discuss what would be the terms of Puerto Rico's
16 independence. And part of what is necessary is for
17 the federal government to begin by acknowledging that
18 it has colonies because this is something that the
19 federal government repeatedly denies. And so how can
20 we discuss decolonization when we are not discussing
21 that with an empire that recognizes its nature and
22 that it - why it has colonies, how it benefits from
23 them, and how the United States is actually the United
24 States and Territories? Right? And that is always

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1 silenced and never discussed.

2 And so, I think that to simply ask would
3 things be better if we were independent is a question
4 that we cannot answer because we do not know what
5 that independence would look like and what it would
6 allow us to do.

7 COMMISSIONER ADAMS: Real quick follow-up
8 that we can agree that if Puerto Rico chose
9 independence, all of the colonial or decisions being
10 made in Washington could be made locally. Right? I
11 mean, that's one way to alleviate the --

12 DR. BONILLA: No. We cannot agree on that
13 because if you look at the rest of the Caribbean and
14 the independent nations in the Caribbean, they do not
15 have a -- they do not determine their entire fate.
16 They are also regulated and determined by
17 organizations like the IMF, the World Bank, and also
18 Washington foreign policy. So, to kind of just simply
19 say well, we will let Puerto Rico go its own way,
20 which is something that the previous administration
21 had also said, and the previous president had asked
22 can we sell Puerto Rico, that doesn't take into
23 account what that would mean and what independence
24 means for former colonies.

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1 Decolonization is not just a matter of a
2 flag and a coin and a stamp and an anthem, it's about
3 the possibility to create new worlds on our own terms
4 with the economic and social principles that we think
5 are important to our communities. And that has to
6 happen in dialogue with our empire and with the global
7 community.

8 COMMISSIONER ADEGBILE: So, I want to come
9 back to a point that Ms. Godreau Aubert, I think, was
10 speaking to in terms of the perception, what you were
11 discerning as a perception on some federal officials
12 that monies were not going to be well spent, that
13 they were going to be misspent, that there was concern
14 about fraud. Now, we think that based on the data we
15 have that the degree of monies that were approved in
16 relation to the ones that were denied, particularly
17 over this title issue, has a pretty serious
18 disparity.

19 But I wanted to ask sort of a broader
20 question because it's a legitimate interest for the
21 federal government not to have disaster funds
22 fraudulently used. I think we can all agree on that.
23 Nobody wants money that is to help people that are in
24 crisis to be misspent. But part of what I heard is

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1 that there were a number of contractors and others
2 who seemed, A, not qualified to discharge the duties
3 for which they were given contracts. Some of them
4 didn't, in fact, discharge those duties and provide
5 the materials that they contracted to provide. And in
6 some sense, some contracts were vitiated or
7 withdrawn.

8 And are you aware of any fraud
9 investigations that have gone into this contracting
10 process of the people that the federal government
11 awarded contracts to outside of Puerto Rico that
12 didn't in fact do what they were expected to do?

13 MS. SANTIAGO: So, we did see the case of
14 COBRA Energy, which involved actually fraud by FEMA
15 in awarding a contract -- favorable terms to a
16 particular contractor by FEMA employees. And that has
17 been investigated. There have been convictions.
18 People are serving jail sentences for that.

19 COMMISSIONER ADEGBILE: And you said
20 that's an energy contract?

21 MS. SANTIAGO: Yes, COBRA Energy.

22 COMMISSIONER YAKI: Related to Maria.

23 MS. SANTIAGO: Yes.

24 COMMISSIONER ADEGBILE: And separately,

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1 some people refer to a contract for a contractor in
2 Florida or --

3 MS. SANTIAGO: No. The Whitefish contract
4 was for a newly formed company in Montana that was
5 from Whitefish, Montana, where Secretary Zinke of the
6 Interior was from, and there's been an investigation
7 on that. I'm not sure what the status of that is right
8 now. But it was -- a company with no experience got
9 a contract for, I think, initially \$300 million worth
10 of work. And so, it was very dubious.

11 COMMISSIONER ADEGBILE: Not a rounding
12 error, \$300 million is not a rounding error as I
13 understand it.

14 MS. SANTIAGO: It was -- and I think even
15 more, as I recall.

16 COMMISSIONER ADEGBILE: Okay. And then are
17 you aware of what evidence there is and what the
18 degree of magnitude is of fraud that has been
19 identified of people in Puerto Rico or in Houston,
20 for that matter, associated with the obtaining funds,
21 recovery funds improperly?

22 MS. GODREAU: We have asked for that same
23 data on multiple occasions, and they don't have it
24 available, not even for the recoupment processes. So,

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1 it's, as I said, a perception.

2 COMMISSIONER ADEGBILE: So, no one would
3 know whether there was more or less fraud here or in
4 Louisiana or in Houston, or even in New York City
5 under Sandy? There's no comparison that can be had,
6 and no one has ever been able to show statistics that
7 more fraud would occur here than somewhere else.

8 MS. GODREAU: The answer is no.

9 DR. BONILLA: I don't think that has been
10 shown. But what has been shown is the suspicion of
11 fraud and the overburden that was placed on our
12 communities to ensure that people were entitled to
13 something that they were by law entitled to.

14 MS. TORRES: I don't have the specific
15 data on that, but we started a legal aid project for
16 recoupment letters received by FEMA, and we actually
17 made the front page paper a couple of months ago with
18 this issue. And there were three testimonies of three
19 of our participants. One specifically of that
20 supposedly fraud case was someone that was denied
21 because of ownership, but then because of one of our
22 appeals, they were able to have some money assigned
23 that -- it's actually a woman and I believe her
24 children are disabled. And she repaired her entire

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1 home with those funds, and then months later or years
2 later, she received a letter of recoupment. And for
3 us that didn't make absolutely no sense. Because yet
4 again, they approved, finally, in a process of
5 appeal; they accept the ownership documents that our
6 lawyers were able to present because of the appeal;
7 and then she receives this recoupment.

8 So also, we have to analyze how they are
9 interpreting fraud. Right? Because ownership is an
10 issue; it depends how they are interpreting the
11 documents that they are receiving for proving this
12 ownership.

13 COMMISSIONER KLADNEY: But how did they -
14 - do you know how they determined to send the
15 recoupment letter in the first place, I mean, what
16 information they had that led them to believe that
17 they were entitled to recoupment?

18 MS. TORRES: What I saw was a letter that
19 stated that they made an error or mistake when
20 analyzing the documents that were presented in her
21 case, and the specific amount that she needed to
22 reimburse to the U.S. Treasury. I remember our
23 attorney sending me that letter. So obviously, it
24 gives you a term to reimburse the money.

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1 We had another case of an elder that
2 received a very minimum amount of Social Security, I
3 believe it was like \$600 a month, and they -- another
4 recoupment case. FEMA approved the assistance, and
5 then he received the letter of reimbursing the funds,
6 while the person doesn't have a -- it's basically
7 condemning the person to live in extreme poverty
8 because they were also in the letter saying that they
9 could retain from the Social Security check, which
10 was like \$600 a month.

11 COMMISSIONER KLADLEY: So the recoupment
12 -- excuse me.

13 MS. TORRES: It's a very unjust --
14 recoupment is a very unjust process as well, so I
15 just wanted to say that.

16 COMMISSIONER KLADNEY: It's an ongoing
17 process that's an appellate process.

18 MS. TORRES: Yes.

19 COMMISSIONER KLADNEY: And you haven't had
20 any determinations yet? Is that correct?

21 MS. GODREAU: Recoupments are an ongoing
22 process, and they have a statutory limit of three
23 years. So, what we're seeing right now is a lot of
24 people that have already received the letters, the

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1 letters are coming in English, that has to do with
2 limited English proficiency. So, they are coming in
3 English so people don't realize that they are
4 undergoing a recoupment process until there -- it is
5 reported to the IRS, and it is too late in the
6 process.

7 But we recently had a meeting with FEMA
8 officials, and we requested a meeting only to discuss
9 the issue of recoupment, and I must say that, once
10 again, how much they don't know about that. Ayuda
11 Legal Puerto Rico posted a blog in our website. That's
12 not like a huge outlet of news, and a FEMA press
13 official emailed us saying that we were lying about
14 the recoupment process, that they were following
15 their process. That was a very angry email, and we
16 responded by asking for a meeting.

17 At the meeting that was about recoupment,
18 the officials that came, nobody knew about the
19 recoupment process. Nobody could say who the lawyer
20 in charge of the recoupment process was. They
21 couldn't say how a letter of recoupment process looks
22 like. So what we were saying is that if people are
23 undergoing a recoupment process, please bring the
24 data. They don't have the data available, so we have

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1 to present a FOIA, and we're waiting on that FOIA.

2 But also we were asking them for everyone
3 that has received a recoupment to receive, for
4 example, the guideline that has to do with ownership,
5 so that they could have a chance to navigate through
6 the process. Because case by case, it's never going
7 to be possible to reach all of them.

8 COMMISSIONER KLADNEY: So, let me just say
9 we went through the whole thing with forms about
10 Spanish to English a while ago, and now they're
11 sending out forms in English to recoup their money?

12 MS. GODREAU: Letters in English. Yes.

13 COMMISSIONER KLADNEY: Letters. Thank
14 you.

15 CHAIRWOMAN CANTU: All right. I would just
16 want to check one last time, Commissioner Gilchrist,
17 did you have any questions? We're in overtime, but
18 you're worth it.

19 COMMISSIONER GILCHRIST: Thank you, Madam
20 Chair. No questions in the essence of time. I just
21 want to thank the panelists again for their remarks
22 today. Thank you.

23 CHAIRWOMAN CANTU: Last on this --
24 Commissioner Yaki, and I apologize to the panelists

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1 for going over time, but this information is so
2 valuable to us.

3 COMMISSIONER YAKI: So just one last
4 question. It's just a very specific data, if you have
5 it, you can send it to us, but if you can talk about
6 it, it'd be great. One of the things I'm wondering is
7 what was -- for the people who actually did make it
8 through the process, how much was their average award
9 from the federal government? Because one thing that
10 we're trying to look at is whether or not some people
11 get a higher reward than others based on where they
12 live or stuff like that. So that would be very helpful
13 to us if you actually have any of that information.

14 MS. GODREAU: We can share with the
15 Commission that the Center for the New Economy
16 recently created some maps, and also people from
17 Texas Appleseed and other organizations abroad are
18 working on a map to figure that out.

19 COMMISSIONER YAKI: Okay. Thank you.

20 CHAIRWOMAN CANTU: This brings us to the
21 end of the briefing portion of our meeting.

22 We're going to break for lunch for one hour and
23 return for the public comment segment of the
24 briefing. We were going to do it at 1:45. We'll come

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1 back at 1:51 Atlantic Standard Time. For those on the
2 island still interested in joining us live to submit
3 in-person comments, this is where we are. We are at
4 the InterAmerican University of Puerto Rico Law
5 School located at 170 Calle Federico Costas, San
6 Juan, 00918, Puerto Rico.

7 As a reminder, please, we have to exit
8 this room for the cleaning protocol for COVID. Be
9 sure you take all your personal belongings with you
10 and only your own personal belongings. Because I pick
11 up bags all the time, and I go where do I get this
12 bag, where do I get this pen? So don't be me.

13 Enjoy your lunch. I'm going to see
14 everyone back here at 1:51. Thank you.

15 (Whereupon, the above-entitled matter went off
16 the record.)

17

18 ***PUBLIC COMMENT SESSION TRANSCRIPT***

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1 **TESTIMONY OF EVER PADILLA RUIZ, EXECUTIVE**
2 **DIRECTOR, COMISIÓN DE DERECHOS CIVILES**

3

4

5

We all know that the effects Hurricanes

6

Irma and María had over the island were

7

devastating. Both the state and federal

8

government underestimated the impact of

9

Hurricane María. The government of Puerto

10

Rico did not have access to the necessary

11

quick-response resources to deal with the

12

magnitude of the disaster. This was

13

worsened by the lack of clarity within the

14

roles of the federal, state and municipal

15

governments. FEMA did not have enough

16

resources here in the island. It did not

17

have enough food and water to fill the

18

needs of 3.4 million people.

19

 The rest of the panelists have spoken

20

about the bureaucracy and slowness in

21

soliciting funds from FEMA. We understand

22

the importance of documenting public

23

expenses. However, in an emergency

24

situation, these procedures need to be

25

flexible enough to save the lives of

1 people.

2 The impact of Hurricane María left us
3 in the dark, with no electric service,
4 without potable water, without
5 telecommunication networks and with very
6 little food. We didn't have enough reserve
7 food supplies or medication.

8 By that time, we had already
9 experienced a significant loss in the
10 amount of local healthcare workers, which
11 only added to the bigger challenges for our
12 access to services. Immediately after the
13 impact of Hurricane María, an important
14 part of the population abandoned the island
15 in search of medical attention due to
16 different chronic health situations.
17 Neither federal, state or municipal
18 authorities had a registry of patients with
19 chronic illnesses, nor with conditions
20 requiring electronic mechanisms for their
21 survival.

22 The high number of elderly people who
23 live in vulnerable conditions, and below
24 the radar of governmental authorities, was
25 evidenced. Eighty-one percent of that

1 population's only source of income is
2 Social Security, and thirty-six percent of
3 those live completely alone. The emergency
4 operational plan of nursing homes and
5 assisted living facilities proved to not be
6 adapted to the magnitude of the phenomenon.

7 Nursing homes and assisted living
8 facilities, in spite of having water
9 cisterns and power generators, faced
10 problems keeping up with the demands for
11 water, diesel, gasoline and food. A report
12 from Cornell University in 2016 estimated
13 that more than 21 percent of the population
14 of Puerto Rico had some form of disability,
15 a rate higher than the 50 states in the
16 nation.

17 However, many of these people with
18 functional diversity lack the resources and
19 financial assistance to cover their costs
20 and tend to their needs. There is no way
21 to prepare for a hurricane under these
22 circumstances.

23 People deprived of their liberties,
24 under the custody of the state, depend on
25 the governmental machine to see that their

1 rights are met. This requires adequate
2 planning, not only to ensure their lives,
3 but also the services they require.

4 The structures where our country's
5 prisons were built have historically lacked
6 the necessary elements to tend to
7 emergencies. Their construction has not
8 been adapted to the realities of a tropical
9 climate, and the structures have been built
10 without natural light or ventilation. For
11 over 100 days, without electric power,
12 without air conditioning, over 10,000
13 people in correctional facilities perished
14 and suffered the onslaught of the
15 hurricane, and no one spoke of that
16 population.

17 The situation with the homeless is the
18 gravest and most complex problem we face.
19 Analyzing it is tricky for many reasons.
20 This was one of the groups who was most
21 adversely affected from the impact of the
22 hurricane.

23 On the other hand, we documented the
24 discriminatory treatment received by
25 sexually diverse groups, particularly trans

1 people, who were markedly discriminated
2 against. Many of their claims for help to
3 FEMA were rejected because the information
4 in their database was incompatible with the
5 gender identity of the solicitant. The
6 information should have been sorted out in
7 the system before trying to access aid in
8 the midst of an emergency.

9 The food supply in the country was
10 greatly affected. Agriculture suffered a
11 large blow, and the closing down of ports
12 create a large supply [sic], the biggest in
13 our history. Investigators from the Milken
14 School of Health at George Washington
15 University concluded that the food supply
16 provided by FEMA after Hurricane Maria did
17 not comply with the United State's
18 nutritional guidelines. A strong
19 correlation was demonstrated among distance
20 and the long wait-periods for the
21 restoration of electricity, water and
22 telecommunications.

23 On average, homes spent 84 days
24 without electricity, 68 days without water
25 and 41 days without phone service after the

1 passing of Hurricane María. The impact of
2 the hurricane uncovered the vulnerabilities
3 of our structural framework. The hurricane
4 exposed profound economic and social
5 inequalities, and in our realities, which
6 must be overcome in order to be able to
7 fully exercise human rights. We are the
8 poorest jurisdiction in the entire national
9 territory.

10 If everything we've discussed seems
11 harsh, evens harsher was the experience of
12 the residents of the island municipalities
13 of Vieques and Culebra. In the written
14 document we get into some of the
15 recommendations to improve federal
16 agencies' responses. However, without
17 trying to polarize this discussion, a topic
18 which we cannot avoid discussing, a topic
19 from which we cannot escape if we intend to
20 have an honest reflection about the
21 discriminatory treatment which we Puerto
22 Ricans who reside on the island are the
23 object of, is our political situation.

24 In order to overcome all the problems
25 I spoke about, and inequalities in Puerto

1 Rico in the face of any future event, it's
2 necessary for the Unites States Congress to
3 deal with the issue of our political
4 situation in order to be able to fully
5 exercise our rights. And I am available to
6 answer any question.

PUBLIC COMMENT SESSION

CHAIR CANTÚ: (In English) Welcome back to the U.S. Commission on Civil Rights briefing, on the Civil Rights Implications of Disaster Relief: Hurricane María in Puerto Rico. During this time, commissioners will hear testimony from impacted communities. Each individual will have up to five minutes to speak, with spots having been allocated on a first-come, first-served basis. The public comment period will last until the last person has spoken. We are going to have a ten-minute break at 3:40 p.m., if we need one.

So, let's proceed. Please state your name before you begin your presentation. And I hope I will pronounce it correctly, because I'm going to call you forward. So, let's proceed with the first public comment. And I'm calling forward Raymond Capo Díaz.

MR. CAPÓ: (In English) Good afternoon. Welcome to Puerto Rico. I am Raymond Capo.

1 I will explain in Spanish my presentation.

2 (In Spanish) The aftermath that my
3 Puerto Rican nation has suffered since 2017
4 after the passage of Hurricanes Irma and
5 Maria, Category 5 hurricanes, were not the
6 first signs of the premeditated
7 discriminations and violations of civil and
8 human rights against the Puerto Rican
9 people.

10 Up until now, one of the few
11 improvements we've seen has been the
12 opening up of funds retained by the FEMA
13 insurance fund, which, as property owners,
14 we "boricuas" also contribute the same
15 amount of money you contribute, in
16 proportion to your states, which, due to
17 the previous obstruction of your president,
18 Donald Trump, against Puerto Rico, are now
19 distributed in a better way by your current
20 president, Biden.

21 Another positive point, by exception
22 of law, since 2020, is that as of today,
23 Puerto Rico surpasses The US by over 80
24 percent in vaccination rates against the
25 deadly COVID-19 virus for the local

1 population, due to the timely distribution
2 of over 5 million vaccinations which have
3 been administered.

4 But the violation of rights started in
5 1898, when Puerto Rico was invaded and
6 attacked militarily by the Navy War College
7 of the academy at Annapolis, Maryland,
8 since 1896, because of its foreign army's
9 espionage with plans to transform Puerto
10 Rico into a military and coal bunker, and
11 create a coup d'etat that would change the
12 course of our history and civil destiny,
13 against the autonomous will of prior
14 democratic elections.

15 The Puerto Rican experience tells us
16 that, due to the US's imperialist
17 intrusion, our sovereign life as a Latin
18 American country -- the US appropriated our
19 sovereignty and it took us and humiliated
20 us as bounty of a war we were not part of,
21 which led us to collective bankruptcy by
22 squandering and eliminating our surplus
23 goods, and eliminating our gold coin by 40
24 percent, the Puerto Rican "peso", in order
25 to make us incur in a deficit, and impede

1 the competitiveness of Puerto Rico in the
2 international markets, and in doing so,
3 completely take over our land and economy.

4 In consequence, Puerto Rico lived
5 through the worst, most extreme misery
6 during the first half-century, with
7 unelected foreign governors, of false
8 symbols selling us the "American Dream,"
9 and the broken promise of the lying
10 invader, General Nelson Miles, about having
11 brought supposed freedom and a splendidous
12 civilization to Puerto Rico.

13 In 1940, Puerto Rico became the
14 poorest country in America, below Haiti,
15 with an annual income of 121 dollars, an
16 illiteracy rate of over 80 percent of the
17 barefoot and hungry, and a deadly disease-
18 infested population.

19 In 1950, a portion of the patriotic
20 Puerto Rican citizens justified their
21 reason, in self-defense, due to the
22 oppression of the existing colonial slavery
23 which existed, and carried out an armed
24 nationalist revolution, justified by UNO's
25 international laws. But circumstances were

1 difficult, and our country continued being
2 lied to by the forces of United States
3 imperialism, working towards continuing to
4 occupy Puerto Rico without a true consent
5 of the governed.

6 After the Cold War, the established
7 regiment lied, and using institutionalized
8 violence, formalized a colonial
9 constitution, withdrawing the collective
10 right to the 348 sovereign decision-making
11 powers, which were stolen. This was a
12 false constitution, as the United States
13 selected 20 percent of rights for total
14 health, for an integrated educational
15 system and for the right to dignified
16 labor, confusing the people of Puerto Rico
17 after they had excitedly voted.

18 The United States, for its personal
19 unequal convenience, came up with a trick
20 in order for Puerto Rico come out the
21 loser, under any which way, under a
22 relationship based on mistreatment, since
23 Puerto Rico belongs to, but is not part of,
24 the United States. Trying to understand
25 what that means.

1 There would be discrimination in order
2 to treat us as a republic, to impose taxes
3 on our exported goods, derived from
4 alcohol, among others. There would be
5 discrimination to try to treat us as a
6 province-state in order to unilaterally
7 impose on us their disloyal and all-
8 encompassing banking laws and interstate
9 commerce. There would be discrimination to
10 treat us as a territorial colony in order
11 to impose on us their immoral laws, which
12 misappropriated control of our import
13 duties, maritime and air control of ships
14 and routes which were exclusively North
15 American.

16 Today Puerto Rico has a broken
17 structure which lacks economic development
18 due to having its hands tied in a captive
19 market of exploitation of 88 percent of US-
20 manufactured consumer goods under an unjust
21 dumping and bullying of commercial
22 incompetence.

23 CHAIR CANTÚ: (In Spanish)

24 Mr. Capó, excuse me. A little slower for
25 me.

1 MR. CAPO: (In Spanish) Sure.

2 CHAIR CANTÚ: (In Spanish) Thank
3 you.

4 MR. CAPÓ. Puerto Rico suffers by
5 being a sick and dysfunctional colonial
6 society going through a bad quality of life
7 due to external and internal factors. The
8 absolute American dominance over our air,
9 maritime and land spaces, has transformed
10 Puerto Rico into a narc-state filled with
11 organized crime, which has led to the
12 increase of social, economic, political and
13 spiritual illnesses. Mental illness, an
14 increase in school dropouts, in illiteracy,
15 prostitution, in thousands of points of
16 sale for drugs, in hundreds of thousands of
17 alcoholics, and tens of thousands of
18 homeless people who walk around the streets
19 in awful conditions, have ruined our life
20 in several historical records.

21 If we add the fearful corruption of
22 institutionalized violence by colonial
23 incumbent governments, the outlook is
24 chaotic. Even though the United States has
25 signed the Bill of Human Rights, it has

1 failed to comply in two plebiscites and
2 requested referendums, and another nine
3 carried out, and 39 resolutions for
4 decolonization of Puerto Rico by the United
5 Nations.

6 In response to this, national
7 patriotic Puerto Ricans have been obligated
8 to recur to our right of peaceful civil
9 resistance, in self-defense, against
10 American aggression. Because during five
11 continuous generations, 124 years of a long
12 wait for our freedom has transpired.

13 In sum, we conclude that US presence
14 has never had legitimate authority because
15 it has been illegal in Puerto Rico from the
16 beginning. Protected under international
17 law, we reject the imposition of colonial
18 servitude on our Puerto Rican people, and
19 we claim to the United States of America
20 the just and quantified monetary
21 compensation of 3 trillion dollars which,
22 since 1898, are due to us in lieu of
23 compensation by damages.

24 We aspire to have a good relationship
25 with the United States of America, in

1 treaty negotiation, but no more
2 subjugation. Our people deserve to heal
3 and reach their collective happiness in
4 national reconciliation, in order to focus
5 our destiny in prosperity, with other free
6 nations of Earth.

7 CHAIR CANTÚ: Mr. Capo.

8 MR. CAPO: (In Spanish) May a free and
9 independent Puerto Rico live on. So help
10 us, God.

11 CHAIR CANTÚ: (In Spanish) Your time
12 expired. Could you give me your last
13 point? And I can accept the complete paper
14 if you give it to me.

15 MR. CAPÓ: (In English) Of course.
16 Yes. Yes.

17 CHAIR CANTÚ: (In English) Okay.
18 Please.

19 MR. CAPÓ: (In Spanish) ¿The last
20 paragraph?

21 CHAIR CANTÚ: (In Spanish) Yes, please.

22 MR. CAPÓ: (In Spanish) Protected
23 under international law, we reject the
24 imposition of colonial servitude on our
25 Puerto Rican

1 people and we claim to the United States of
2 America the just and quantified monetary
3 compensation of 3 trillion dollars which,
4 since 1898, are due to us in lieu of
5 compensation by damages.

6 We aspire to have a good relationship
7 with the United States of America, in
8 friendship, treaty negotiation, but no more
9 subjugation. Our people deserve to heal
10 and reach their collective happiness in
11 national reconciliation, in order to focus
12 our destiny in prosperity, with other free
13 nations of Earth.

14 May a free and independent Puerto Rico
15 live on forever. May God bless us.

16 CHAIR CANTÚ: (In English) Thank you.
17 Thank you.

18 MR. CAPO: (In English) Of course. God
19 bless you.

20 CHAIR CANTÚ: (In English) And we do
21 want to receive it for the record. Okay.
22 Don't give us the original one, but do
23 send us one.

24 MR. CAPO: (In English) Yes. This is
25 yours.

1 CHAIR CANTÚ: (In English) Thank
2 you.

3 MR. CAPO: (In English) All right.

4 CHAIR CANTÚ: (In English) The next
5 speaker is Franklin Delano López.

6 Are you speaking in English or
7 Spanish?

8 MR. LÓPEZ: (In Spanish) In Spanish.

9 CHAIR CANTÚ: (In Spanish) In Spanish.

10 MR. LÓPEZ: (In English) But I'm going
11 to say that I'm a former United Press
12 International investigative reporter, as
13 well as The Associated Press. Currently,
14 I am semi-retired.

15 COMMISSIONER YAKI: (In English) I'm
16 just going to say, the same rule we have
17 for everybody, which is, anything you
18 wrote, you can hand in; it will be part of
19 our record.

20 MR. LÓPEZ: (In English) I did
21 already. COMMISSIONER YAKI: (In English) So
22 you can read less.

23 MR. LÓPEZ: (In English) I'm going to
24 be as brief as I can be.

25

1 COMMISSIONER YAKI: (In English) Yes.

2 CHAIR CANTÚ: (In English) Okay. MR.

3 LÓPEZ: (In English) All right?

4 CHAIR CANTÚ: (In English) Right.

5 MR. LÓPEZ: (In Spanish) Welcome to the
6 narco-colony of Puerto Rico, infested by a
7 pandemic of massive corruption which denies
8 most of the population, who lives below the
9 national poverty levels, access to federal
10 resources for its development and quality
11 of life.

12 I don't come here to denounce personal
13 circumstances. Colonialism is the most
14 productive soil for the violation of human
15 and civil rights. The topic of this public
16 hearing is how are American citizen's civil
17 rights impacted in the narco-colony, the
18 assignment of federal funds through FEMA
19 and other agencies in the face of natural
20 disasters.

21 When allocation of federal funds is
22 impeded by acts of corruption, it also bars
23 the rights of citizens to get out of the
24 poverty that ties them to silence,
25 dependency and the social passivity in what

1 is supposed to be a free democratic
2 society.

3 The moment when Puerto Rico was passed
4 from Spain to the United States, was a
5 moment in which the nation was in an
6 expansionist politic which historians have
7 called "imperialistic," which began with
8 the control of small islands in the
9 Pacific, Atlantic and other oceans and
10 seas, in search of guano accumulated from
11 marine birds, to be used as fertilizer for
12 increasing the production of food in the
13 states of the Union due to an increase of
14 population.

15 Due to time constraints, I find myself
16 obligated to summarize my point of view.

17 At the beginning of the 20th century,
18 the Supreme Court of the United States
19 established a legal structure and framework
20 for the cases known as the "Insular Cases,"
21 which served to segregate and discriminate
22 against the citizens of the conquered
23 territories in 1898. Puerto Rico's
24 population was affected, in spite of the
25 fact that, under the Jones Act of 1917,

1 American citizenship was granted to the
2 citizens of the territory.

3 The Supreme Court established that the
4 Constitution and its civil rights were not
5 automatically extended to the citizens of
6 territories. In other words, Congress had
7 absolute powers under the territorial
8 clause in order to discriminate against its
9 population. See Insular Cases:
10 Deannexionist Doctrine by Professor
11 Christina Duffy Ponsa, of Columbia
12 University.

13 During the first decades of colonial
14 control, Washington used these powers to
15 build a public infrastructure which did not
16 exist under the rule of Spain, roads,
17 bridges, schools, hospitals, docks and
18 universities, et cetera.

19 During the 30s, Puerto Rico's
20 population was used as a laboratory to
21 carry out tests on the effects of viruses,
22 very similar to those carried out in
23 Tuskegee, Alabama, between 1932 until 1972,
24 with the syphilis virus. These tests were
25 carried out by Dr. Cornelius Rhoads, a

1 military medic assigned by the Rockerfeller
2 Center to carry out the tests in Puerto
3 Rico.

4 During the 40s, the narco-colony was
5 used to carry out a program to sterilize
6 Puerto Rican women. During the first term
7 of the incumbency of Governor Luis Muñoz
8 Marín, a gag law was approved which made
9 public expressions and activities which
10 promoted and favored independence, a crime.

11 The colonial government contributed
12 and participated in the fateful operative
13 titled Cointelpro, with the appointment of
14 billions of dollars in federal funds under
15 the Grand Society Program under President
16 Lyndon Johnson. Corruption cases began to
17 sprout in all corners of society. Abuse
18 within programs such as Social Security,
19 Disability and Medicare, as well as labor
20 and education, did not take long to be
21 felt.

22 CHAIR CANTÚ: (In Spanish) You have
23 one minute.

24 MR. LÓPEZ: During the 90s, city
25 mayors were arrested for profiteering from

1 federal funds for the removal of debris.
2 Also, arrests for corruption were carried
3 out involving hundreds of millions of
4 dollars from the Puerto Rico Department of
5 Education. Puerto Rico had a student
6 population of 630,000 students during the
7 70s, and today it stands under 250,000.

8 The health reform program,
9 establishing a plan for universal coverage,
10 has been -- and is being used by the two
11 main political parties -- to raise funds
12 for their campaigns.

13 Also, the biggest scandal of the last
14 century, the use of federal funds assigned
15 to the AIDS Institute, which was assigned
16 cash, tens of thousands of dollars to all
17 candidates for governor, for the San Juan
18 mayoral race in the three parties.

19 CHAIR CANTÚ: (In Spanish) Your time
20 is up.

21 MR. LÓPEZ: (In Spanish) One last
22 sentence?

23 CHAIR CANTÚ: (In Spanish) The last
24 paragraph?

25 MR. LÓPEZ: (In Spanish) The last

1 paragraph.

2 CHAIR CANTÚ: (In Spanish) Go ahead.

3 MR. LÓPEZ: Finally, ever since the
4 inception of the illness named "Estado
5 Libre Asociado" (Free Associated State) in
6 1952, the narco-colony has lost over 3
7 million of its inhabitants. And today, of
8 the 8 million Puerto Ricans in the planet,
9 5.3 live in the United States, enjoying
10 the same protections of law and political
11 equality, and said benefits are denied to
12 the citizens of the narco-colony.

13 The massive exodus in population can
14 be considered by The Hague's International
15 Court to be crimes against humanity.
16 Without people there is no nation. Thank
17 you very much.

18

19 CHAIR CANTÚ: (In Spanish) Thank you.

20 (In English) I call next Carlos
21 Pesquera, please.

22 MR. PEQUERA: (In English) My name
23 is Carlos Ignacio Pesquera Morales. I'm
24 a former Secretary of Transportation and
25

1 Public Works and I was executive director
2 of the Puerto Rico Infrastructure Financing
3 Authority during the 1990s. I come here --
4 and I will summarize my presentation
5 because I gave it to you.

6 In essence, I am a person that is well
7 versed in the issues of infrastructure.
8 When the disaster occurred in Puerto Rico,
9 Congress decided, through the Bipartisan
10 Budget Act, to not only repair the damages
11 to the level they were -- to the conditions
12 they were just prior to the disaster, but
13 it identified critical systems, that they
14 should be put into the condition of
15 industry standards. In other words, not
16 only fix it, but improve it. So that
17 finally happened for water infrastructure,
18 power, schools and medical facilities.

19 The BBA, in section 20601, established
20 the mandate to FEMA to replace or restore
21 the function of a facility or system to
22 industry standards, without regards to the
23 pre-disaster condition of the facility or
24 system.

25 The definition of critical facilities

1 was not part of the legislation. So FEMA
2 went ahead and made its own interpretation
3 of critical facilities. The only place
4 that critical facilities are mentioned in
5 the Stafford Act is when it relates to
6 non -- to, basically, private nonprofit
7 facilities: PNP. So FEMA can provide funds
8 to PNP, private non-for profit facilities.

9 And the only place in the Stafford Act
10 that mentions critical facilities is when
11 it relates to that type of critical
12 facilities, when it refers to that kind of
13 recipient. And there, they don't mention
14 roads and bridges, because the PNP do not
15 work on roads and bridges. Because that's
16 typically a condition that is handled by
17 state governments and local governments.

18 So, in summary, FEMA did not recognize
19 the Puerto Rico transportation
20 infrastructure as a critical facility. And
21 that completely makes no sense. In any
22 other place in the United States that that
23 would happen, that definition will be
24 implemented, it would have been fought, it
25 will be challenged and the place, the

1 state, the city will have prevailed.

2 I tried personally. I explained it to
3 them. But I think, basically, this is a
4 decision to save money, not to really
5 address the congressional mandate. The
6 congressional mandate is to not only fix to
7 the condition prior to the disaster, but
8 really to make it better after, so that it
9 will be better for another disaster.

10 Let me give you one example. The
11 signage system in Puerto Rico, "road
12 signs". And if you have been here a lot,
13 some time, you will know that it is a
14 disaster. So they were damaged during the
15 Hurricane María, as you can expect. So
16 because of the PNP -- FEMA's
17 interpretation, they went along to identify
18 the location of each damaged signage and
19 then they only allowed to repair the
20 signage that was damaged. If the critical
21 facility congressional mandate were
22 implemented, you not only will replace or
23 fix that sign, you will replace all the
24 signage system in Puerto Rico to industry
25 standards. And that means a lot.

1 Today, if you walk around, you will
2 see traffic lights that still do not
3 work, today. And why is that? Because we
4 have to go one by one and demonstrate that
5 it was -- they are in the current condition
6 because they were affected by María.

7 So this is critical. This is really a
8 violation of our civil rights and is really
9 a discrimination, because we don't have --
10 as you know, we don't have anyone to talk
11 to.

12 And sometimes -- to finalize, I know
13 my time is out -- the problem is that
14 Puerto Ricans don't challenge authority.
15 Okay. Puerto Rico should have sued the
16 Federal Government for this a long time
17 ago. But we believe in our colonial
18 mindset that this will be a kind of going
19 against the metropolis. This is looking
20 for our rights.

21 So my request to this honorable board
22 is to request FEMA to modify their policy
23 so that they include the transportation
24 system as part of its critical facilities.
25 And you will do -- if you are here to do

1 something good, I hope you do many things
2 good, but that will be one of the best
3 things that you could accomplish. Thank
4 you very much.

5 CHAIR CANTÚ: (In English) Thank
6 you.

7 I call Ruth López.

8 SRA. LÓPEZ: (In English) Good
9 afternoon. I reside at ESJ Towers
10 Condominium in Isla Verde. It's an iconic
11 building. I moved there in 2017, in
12 August. First, I got hit by Irma, then
13 María.

14 There is a manager in the building t.
15 He is uncertified, unlicensed, would not
16 leave the premises. He's here under Law
17 22. That law was to promote business, the
18 economy and to create jobs on the island.
19 I've read certain studies that have proven
20 it has not done either.

21 And after the hurricane, he said that
22 all the owners had to give their claims to
23 him for a collective insurance claim. His
24 wife was the broker on our insurance policy
25 that he would not divulge to us. Everyone

1 did.

2 Unbeknownst to the owners, on December
3 4, 2017, he referred -- he received the
4 first amount from Chubb for a million
5 dollars. On December 27, 2017 -- what, two
6 and a half months after the hurricane, he
7 received another 3.5 million.

8 In February 2018, he sold our claims
9 without our consent to Attenure, a New York
10 based hedge fund company. He received a
11 1.5 million advance. And then, they would
12 go back to Chubb and renegotiate hopefully
13 for 30 million. This was completely
14 illegal. We never received our settlement.

15 And in February 2018, he began
16 renovations in the building. He replaced
17 the pool. The pool was not damaged. He
18 fixed the Lanai -- those are the ones that
19 he claims that he owns, we don't know,
20 allegedly. And he took down the automatic
21 doors. That's an ADA violation.

22 He also started construction on a
23 building across from our building. And he
24 connected the waterlines and the
25 telecommunication lines to our building.

1 However, four years later, nothing has been
2 done. Our building is in complete
3 disaster. Cement is falling. The
4 extractors were never replaced. The
5 mildew, the mold, the humidity in the
6 building is unhealthy.

7 The building has a lot of retirees. I
8 am one. And people that are ill. He
9 threatens us with cutting off our power and
10 to shut off our electricity. We pay our
11 own electricity and the water is included
12 in our maintenance bill.

13 So, under Law 22, it has only -- well,
14 in my experience, and I have read in the
15 papers, in the local papers, that it has
16 caused -- the people that are coming here,
17 not all, have taken advantage of the
18 island, have destroyed the environment.

19 He created a pile of rubble when he
20 did some construction. And it's still
21 there, for four years. And it is rat
22 infested and it smells. It's right on the
23 beach. We are on the beach. Okay. These
24 things destroy the environment.

25 At the banks, the insurance companies,

1 all the governmental agencies, the
2 politicians, the minute I mention his name
3 I am vilified. I am chastised. I am
4 slapped with frivolous lawsuits. And he
5 knows how to abuse the judicial system
6 against the people. He has done nothing
7 for the island, except take, take, take.

8 I live in fear. The building is
9 uninhabitable, which I think is his -- I'm
10 just guessing, because if the building is
11 declared uninhabitable, it can be bought in
12 an auction for nothing, for pennies. And
13 then he can come in and buy it -- get the
14 incentive.

15 And then, I was informed by a
16 reporter -- I brought in a reporter from
17 the Miami Herald, he said, "You can sell
18 the incentive". I don't know what that
19 means. I don't know if there is an
20 oversight board. But if Law 22 has to be
21 revised or repealed, and there has to be an
22 oversight board -- because all it has done
23 is siphoned money from PR.

24 And I -- and the politicians are in
25 with him. The corruption is unbelievable.

1 He brings in people that were in the
2 previous administration and in the present
3 administration.

4 My own attorney told me on Monday,
5 "I'm sorry, I can't do this for you.
6 Because his attorney is a former senator
7 and he would destroy my career and I would
8 never win." So, this is the level of
9 corruption that we live under.

10 And then, I live in fear because I am
11 threatened. I'm imprisoned. I can't move
12 out of my apartment. I lost property value
13 because the building looks like a favela in
14 Brazil at this point. So, I have the
15 photos.

16 And now, because we have a trustee, he
17 sends out a letter on January 21, 2020 --
18 no, January 21, 2021, that, "We conducted a
19 preliminary inspection to determine the
20 reasons for the high levels of humidity
21 present in ESJ Mare Hotel" -- he changed
22 the name of the building. You can't do
23 that. You don't own a building. We've
24 asked the trustee to return it, "No, let
25 him do what he wants."

1 So, I go to DACO, supposed to protect
2 the consumer. They protect him. He's not
3 certified. He's not licensed. The DACO
4 law, the regulation Law 129 says that by
5 July 20, 2021, he had to be certified. I
6 put in my -- I asked for verification from
7 DACO online. They tell me, "Call me". I
8 call them; won't answer me. I go down in
9 person; they stand at the door, they don't
10 let me in. And I say, "Well, I want to
11 know if this is -- because otherwise, we
12 have to get, as the law requires, a
13 certified licensed administrator."

14 "We don't have to answer you,"
15 whatever. And that's what I get.

16 I go to OGPe; he has no permits.
17 Everything is done here because he is
18 politically connected.

19 And the little people are suffering.
20 The people in our building are old.
21 They've lived on this island for years.
22 And they live in fear of broken elevators,
23 of vermin. This is his depravity -- his
24 level of depravity.

25 During COVID, the building was closed.

1 It was empty. He fired all the employees.
2 The security company left the second month
3 because of nonpayment. He put bicycle
4 locks on our doors. That is inhumane.
5 That is a violation of everybody's civil
6 and human rights.

7 CHAIR CANTÚ: (In English) Thank you,
8 Ms. López.

9 MS. LÓPEZ: (In English) Thank you.

10 CHAIR CANTÚ: (In English) I call Fernanda
11 Lynch.

12 MR. MEDINA: (In English) Number
13 seven, Juan Medina.

14 CHAIR CANTÚ: (In English) Jesús
15 Medina Cintrón, is that you?

16 MR. MEDINA: (In English) Number seven.

17 CHAIR CANTÚ: (In English) Okay. I'm
18 going to call names in the order that they
19 were given to me. Please, raise your hand
20 if I call your name. Jesús Medina
21 Cintrón. Okay. Juan Medina.

22 COMMISSIONER YAKI: (In English) Put on
23 the microphone.

24 CHAIR CANTÚ: (In English) I'm sorry. Is
25 Jesús Medina Cintrón here?

1 Raise your hand. Is Juan Medina here?

2 MR. MEDINA: (In English) Juan Medina.

3 CHAIR CANTÚ: (In English) You are Juan
4 Medina. Thank you. Welcome.

5 SR. MEDINA: (In English) Thank you.

6 My name is Juan Medina Camacho. I'm
7 representing a private nonprofit
8 organization.

9 (In Spanish) I am going to express
10 myself in Spanish because it's my native
11 tongue.

12 The community of Villas de Guavate in
13 Cayey, Puerto Rico, was approached after
14 Hurricane Maria because it suffered
15 damages. The damages were caused mostly by
16 rain, wind and landslides.

17 The plumbing for water distribution
18 was ruined. Part of the water storage tank
19 was ruined. And water from the deep
20 well -- well, the well was damaged, as well
21 as the power generator. For this reason,
22 funds were solicited, in this case to Rural
23 Development.

24 Rural Development assigned a public
25 agency -- private, sorry, called The

1 National Rural Water Association. Those
2 were the people who were going to aid in
3 the collection of funds. During that time-
4 period from 2017 to 2019, they had to
5 recruit an engineer, and that is in the
6 capacity I come in.

7 I submitted an estimate on their
8 behalf, a petition, for every year.
9 Obviously, the damages must be corrected,
10 but corrected according to present codes.
11 And that is how it became accepted by Rural
12 Development.

13 At the beginning of the process of
14 assigning funds, funds were requested along
15 with everything they asked for at that
16 moment, that moment, I repeat. After that,
17 they asked us to put together a contract
18 because we needed one. This is the
19 "Engineers Joint Contract Documents" for
20 the contract that they accepted. That
21 contract cost 200 dollars. Obviously, the
22 community pays for it because the estimate
23 had already been submitted.

24 That contract has about 200 pages and
25 it has to be molded according to the type

1 of project. We molded it. We submitted
2 it. To our surprise, when they reviewed
3 it, they say it's not the contract because
4 it's a 2020 version, and within their
5 procedures, it must be the 2014 version.

6 So from there, six, seven, eight
7 months go by. We get the 2014 version.
8 The same procedure is carried out. It's
9 submitted. It's reviewed. It is assumed
10 that it's the final contract for the
11 assignment of the rest of the funds.
12 Because in the meantime, the community
13 requested an advance of the funds to pay
14 for the construction permit request, the
15 environmental document and the agencies'
16 recommendations on infrastructure. All of
17 this is stated there.

18 After that -- that contract goes to
19 their legal division, during which time
20 more revisions of the contract took place.
21 In those other revisions, the community was
22 asked for insurance to cover their
23 facilities, insurance for the engineer and
24 insurance for the contractor. Those monies
25 for the insurance had not been taken into

1 account and hadn't been requested in the
2 proposal. And from there on out,
3 everything has been halted. We are in the
4 end of 2021 and nothing has happened.

5 Why has nothing happened? Because
6 every time that we submit something, we get
7 asked for something new. In other words,
8 that they, instead of cooperating --
9 because there are millions of dollars. In
10 this case -- the Rancho Grande community in
11 Naguabo is in the same situation and
12 Barranquita's Doña Mayo community as well.

13 All of these communities are isolated
14 and have rural aqueduct systems and the
15 Aqueduct and Sewer Authority does not
16 accept them. They have to provide their
17 own funds.

18 In the case of Villas de Guavate, it's
19 20, close to 25 families which pay 20
20 dollars a week. If you do the math, that's
21 about 600 dollars. And with 600 dollars a
22 month, they need to chlorinate, provide
23 maintenance, create reports. In other
24 words, there is work.

25 CHAIR CANTÚ: (In Spanish) Okay.

1 Can you hand in the entire package to us?

2 MR. MEDINA: (In Spanish) It's done.

3 CHAIR CANTÚ: (In Spanish) You already
4 turned it in?

5 MR. MEDINA: (In Spanish) I am going to
6 turn in before January -- in writing.

7 CHAIR CANTÚ: (In Spanish) Okay. MR.
8 MEDINA: (In Spanish) But, in sum, that is
9 what has transpired.

10 CHAIR CANTÚ: (In Spanish) Thank you.

11 MR. MEDINA: (In Spanish) Our position
12 is, this is discrimination.

13 CHAIR CANTÚ: (In English) Okay. I
14 hear you. Thank you.

15 MR. MEDINA: (In English) You are
16 welcome.

17 CHAIR CANTÚ: (In English) Do I have
18 Rafael Rodríguez Rivera? Raise your hand
19 if you are here.

20 (In Spanish) Raise your hand. Rafael
21 Rivera. Just a moment. Your name?

22 MS. VILLANUEVA: (In Spanish) Carmen
23 Villanueva Castro. I am number 10.

24

25 CHAIR CANTÚ: (In English) Tell me

1 your name. Okay. Your name?

2 MS. VILLANUEVA: Carmen Villanueva
3 Castro.

4 CHAIR CANTÚ: Castro. Okay.

5 MS. VILLANUEVA: (In Spanish) Good
6 afternoon. Thank you very much.

7 Today I am here in my role as a
8 community leader and proudly representing,
9 as spokesperson for Puerto Rico, in Derecho
10 a Vivienda Digna, a movement known for its
11 initials in Spanish, PRODEV, the voice of
12 over 115 community leaders throughout the
13 entire archipelago, within 79 communities.

14 I would like to point out that our
15 archipelago did not only go through the
16 disaster caused by hurricanes Irma and
17 Maria these last four years, this was
18 combined with the earthquakes which have
19 continued happening throughout the southern
20 part of the island during the last two
21 years. There is no urgent government
22 response to solve the issue of lack of
23 housing, which thousands of citizens in our
24 communities are going through.

25 Also, we lived through, by the will of

1 the people, the resignation of our governor
2 during the summer of 2019. And we also
3 received, like the rest of the world, the
4 COVID-19 pandemic. I don't believe there
5 is another country in the world which has
6 demonstrated more strength.

7 Of course, I appreciate the space to
8 be able to express before people who, to
9 me, to my understanding, by definition,
10 have the responsibility to look out for the
11 protection of civil rights. And I include
12 social, economic, cultural and
13 environmental rights for the residents of
14 Puerto Rico. You have to respond to the
15 thousands of complaints of fraud in issues
16 which deny our citizens of their
17 fundamental rights.

18 Precisely, I want to start pointing
19 out actions which fall short in protecting
20 our civil rights, something that catches
21 attention every day.

22 In the same way it has happened on
23 other occasions, and which happens without
24 negative consequences, and with impunity
25 for many years, are the recurring

1 accusations of public servants
2 appropriating themselves of public
3 resources for their own benefit, resources
4 which should have been used to satisfy the
5 needs of our people.

6 Tell me if this is not a violation of
7 fundamental rights, as I define them. That
8 is why these acts, and many that go
9 unnoticed after almost four years after the
10 passing of Hurricanes Irma and María -- we
11 are still waiting for the minimum effort
12 that needs to be done to fix roofs which
13 people still have to repair.

14 Today, before all of you, I must
15 confess that I have vivid memories of the
16 winds that a Maria, in its passage over us,
17 devastated the entire island. However,
18 hurricanes only showed us how fragile the
19 infrastructure that for decades we've known
20 would not hold up to the task of saving
21 lives and the assets of our citizens.

22 This forces us to ask the question,
23 how much longer do we have to wait, how
24 many lives, in addition to the 3,000 lives
25 that were lost as a result of the inaction

1 of the state, municipal and federal
2 government.

3 Also today, as part of the complaint
4 presented, I want to leave before you that
5 my country presents one of the highest
6 levels of worldwide inequality between the
7 haves and the have-nots, caused mainly by
8 the lack of transparency, of equality and
9 fairness in the distribution of resources
10 to the population.

11 I would like to see justice done by
12 the equal treatment of our elderly, who are
13 American citizens and who are discriminated
14 against even though they contribute equally
15 to Social Security. I want to present this
16 before you, that I think it's an
17 embarrassment for the United States to have
18 citizens like us pay the same amount and
19 not receive the same compensation.

20 Today I want to denounce before you
21 the unfair treatment of our residents of
22 the island municipalities of Vieques and
23 Culebra, who do not rely on safe or quality
24 means of marine transport, in addition to
25 not having appropriate health services

1 within their islands.

2 Today we denounce before you as well,
3 that our archipelago has over 150,000 human
4 beings who live without drinking water and
5 who are putting their health and wellbeing
6 at risk.

7 Here today, we highlight our
8 denouncement that our country has six out
9 of every ten living under poverty levels
10 and who only have one meal a day available.
11 The girls and boys depend on school
12 cafeterias when they are open. But the
13 reality of this is that they depend, in
14 their majority, on non-profit organizations
15 who distribute food.

16 We are the only territory in the
17 United States who is obligated to use the
18 ships of the most expensive merchant marine
19 in the world. And products that we make in
20 our country, we have to pay triple. This
21 is a reason why we are impoverished.

22 We denounce that no law exists in
23 Puerto Rico for forceful expropriation in
24 order to make justice for our people's
25 lands. It is urgent to make sure that all

1 rules and regulations applicable for funds
2 coming from FEMA, HUD and other federal
3 agencies be applied equally.

4 Today we are here demonstrating
5 resilience and continuing to denounce
6 actions which need to be corrected in order
7 to promote fairness and equality in our
8 country for everyone that lives in it. I
9 hope that you will do so.

10 CHAIR CANTÚ: (In Spanish) Thank
11 you.

12 And your name is?

13 MS. BOBONIS: Nayda Bobonis Cabrera.

14 CHAIR CANTÚ: (In Spanish) Have you
15 registered yet? Have you gone to room 103?

16 MS. BOBONIS: (In Spanish) Yes. I go
17 after her.

18 CHAIR CANTÚ: (In Spanish) Okay. Say
19 your name again.

20 MS. BOBONIS: Nayda Bobonis Cabrera.

21 CHAIR CANTÚ: (In Spanish) Okay. You're
22 allowed, please, the five minutes.

23 MS. BOBONIS: I thought of many ways
24 to begin to communicate what I wanted to
25 communicate in this space, and it proved to

1 be a difficult task.

2 CHAIR CANTÚ: (In Spanish) Slower.

3 MS. BOBONIS: (In Spanish) I'm sorry.

4 One of the first things I remembered
5 when I began this retrospection was my own
6 personal experience.

7 CHAIR CANTÚ: (In Spanish) Nayda, I'm
8 taking notes and they are listening
9 through the interpreter. You have to speak
10 slower. (In English) Slower, please.

11 MS. BOBONIS: Okay. I'm sorry.

12 One of the first things that I recall
13 was the terror I felt about María arriving
14 at my home, and afterwards, my home would
15 have flown away due to the storm. Because
16 my house was made of wood and we didn't
17 know if it would hold up. The house was
18 still there when we arrived. Luckily, only
19 a portion of the zinc roof had flown off,
20 and because of that, water had leaked
21 inside. But it was there. A large part of
22 the country did not have the same luck.

23 I'd love to be able to sit here and
24 say I felt confident that my country was on
25 the right track. I would love to say that

1 the recovery process has been successful,
2 that it has reached expectations, that my
3 people have a safe home, have a good
4 quality of life, have social justice. But
5 I can't.

6 Today, after a little bit over four
7 years since the passing of Hurricanes Irma
8 and María, we cannot say that our
9 archipelago is in a better condition, or
10 even a stable enough condition to say that
11 the people who live here have access to a
12 dignified life. A situation which, without
13 a doubt, has become worse by the
14 earthquakes and the pandemic.

15 That means that our still considerably
16 affected communities have homes in poor
17 conditions, with worn blue tarps, and
18 affected folks who have been denied aid.

19 This is evidenced in a country in a
20 deteriorated physical and mental state.
21 Families have been separated with the need
22 to migrate. Others have had to move from
23 their communities. We continue to drag
24 crisis after crisis after crisis, evidenced
25 by others after each tragedy happens.

1 Before this, in the summer of 2018, a
2 group of community leaders got together.
3 On that occasion I assisted as part of the
4 leadership of Caño Martín Peña. And I
5 realized, not only the power we've always
6 had in our communities to achieve results,
7 but also that the reason this country holds
8 together is thanks to the virtue of
9 solidarity which characterizes our people
10 and for the ability to organize when
11 needed.

12 There we sat and thought about how we
13 would immerse ourselves in the recovery
14 process. I remember when the tragedy was
15 still alive; just a little bit over six
16 months had transpired since María
17 devastated us. We remembered how federal
18 agencies made us feel abandoned. They did
19 not facilitate access to the post-disaster
20 aid processes, even though the people were
21 in shock, worn out, devastated, having to
22 deal with family and social complications
23 which surged after the natural disaster.

24 There were people who were never
25 visited by the authorities. Others

1 indicated that there was only food "thrown"
2 at them without a thought. We knew that
3 federal authorities had arrived but were
4 inaccessible, due to them being in the
5 capital city, to not speaking our language,
6 to having to solicit aid on the internet in
7 a country where communication had
8 collapsed. Some people remained without
9 electricity; many others were trying to
10 begin to organize while still providing
11 support to our neighbors.

12 In spite of the crisis, the commitment
13 to fight for our country and its people
14 remained intact. PRODEV was born from
15 that, the group with which -- who we are
16 with today. And afterwards Firmes, Unidos
17 y Resilientes con la Abogacía, also known
18 as FURIA, which is the organization I
19 represent today.

20 We promote community resilience
21 through participative advocacy and we
22 provide educational and companionship. In
23 this process of companionship we've been
24 able to identify significant problems.

25 One, an inability to gain access to

1 help, including immediate help from FEMA,
2 due to requirements, such as the issue of
3 formal titleship. Two, the imminent risk
4 of displacement of communities due to the
5 lack of comprehensive planning and
6 considering the possibility of mitigation
7 and adaptation. Three, the difficulties in
8 reaching CDBG-DR funds because of strict
9 requirements of the program, including the
10 requirement of reimbursement. Four, the
11 designation of 90 percent of this country
12 as opportunity zones, without the need for
13 community participation or vision in the
14 process.

15 In other words, when we say the
16 recovery process has been rushed, we mean
17 that we repeatedly see these type of
18 government actions, at a local level as
19 well as at a federal one, which result in
20 discrimination against persons and groups
21 of people by reason of social condition,
22 which goes hand in hand with skin color,
23 age, functional diversity and gender.

24 The communities who are most in need
25 of support are the ones who are receiving

1 the least support, and they are precisely
2 the communities we are serving.
3 Communities living in poverty, mostly
4 composed of older adults, many of them
5 living alone, single moms, bedridden people
6 and with a number of health complications.

7 Part of the priorities that we've
8 identified are the need for community
9 planning which ensures the permanence of
10 our people in their spaces, and that
11 citizen participation permeates in every
12 single recovery process, especially
13 everything dealing with CDBG-DR and MIT.
14 And when we speak about participation, it's
15 not pro forma surveys, but one that allows
16 oversight and feedback, and for it to be
17 considered by the government.

18 I am going to finish.

19 CHAIR CANTÚ: (In Spanish) The last
20 paragraph?

21 MS. BOBONIS: (In Spanish) Yes.

22 CHAIR CANTÚ: Okay.

23 MS. BOBONIS: (In Spanish) Our
24 communities have been resilient before a
25 history of discrimination and

1 institutionalized violence, but they've
2 paid a great price. The feelings of alarm
3 and posttraumatic stress affect our lives
4 in the same way as when we had no power and
5 when gas stations were crammed. The pain
6 and frustration are palpable when we
7 remember what happened and we feel a knot
8 in our throats.

9 The urgency to complete the programs
10 does not function if the fundamentals are
11 ignored, that the people need to be an
12 integral part of the process. We have the
13 will, all that is missing is for the
14 government to assume its ministerial role
15 in order for this to be achieved. Thank
16 you.

17 CHAIR CANTÚ: (In Spanish) Thank you.

18 (In English) Now we've got another
19 list of folks. I want to thank this group
20 very, very much. Thank you. We listen,
21 we hear you. And we are going to ask the
22 next group to take your seats. So, thank
23 you.

24 Welcome. You each have five minutes,
25 so you don't read the whole presentation.

1 (In Spanish) Don't read all of it.
2 Please, give me a summary of what you are
3 talking -- explaining. And start with your
4 name, and you put it in writing and you can
5 explain what you want to communicate to us.
6 Okay.

7 We're going to start here. Your name
8 and you can begin.

9 MS. MÁRQUEZ: (In Spanish) Good
10 afternoon.

11 CHAIR CANTÚ: (In Spanish) Good
12 afternoon.

13 MS. MÁRQUEZ: (In Spanish) My name is
14 Margarita Márquez Cruz. I never thought
15 I'd be in front of a stage like this, but
16 I trust in God. And I come here because
17 I'm tired already. I come on behalf of
18 many, on behalf of the people of Puerto
19 Rico which has asked for our help.

20 I solicited. FEMA said I didn't lose
21 anything. Tu Hogar Renace says my losses
22 are more than what they give out. In
23 other words, they didn't help me either.
24 And now, well, R3 -- they arrived in
25 Bayamón on a day like today, and I went
 the next day

1 from that day. I took everything. I owe
2 nothing. Everything is fine.

3 I didn't have a place to live so I
4 went to live at my mother's house, in a
5 little room, but it leaked. I slept on the
6 bed -- even the bed got wet. So I went to
7 Bayamón, to the Jennys. I was there two
8 years, but, you know, in those two years,
9 you know, on the floor because, when there
10 were shootouts, we had to lie on the floor,
11 because that was a place -- but up until
12 there God helped us and took care of us.

13 So my children took me to Texas with
14 them. They got me an apartment, everything
15 nice. A room, everything. My daughter
16 bought me everything, and my son. And i
17 had to travel because R3 told me that I had
18 to be here for the inspections. So I said,
19 "Well, I'm going to have to turn it over
20 because I don't know how long they are
21 going to take."

22 So I turned over my apartment, in
23 which I lived like a queen. Thank God my
24 children -- there are only few who do that
25 for their parents. So now my brother

1 received me here in Puerto Rico. I stayed
2 with him for three months. I mean, I'm
3 like rolling off from one place to another.
4 And I am not -- I am no longer in a
5 position to be rolling around. I am not a
6 ball.

7 So the United States sent that money
8 to Puerto Rico. The money is there. So,
9 what are they waiting for? What are they
10 waiting for? Because they carried out the
11 inspections. Every time I was inspected,
12 "Hey, when will you let me know?"

13 "Give it two to six weeks."

14 They did it a second time: "Two to
15 six weeks." The third time I know -- I
16 don't owe anything. I mean, it's not on my
17 part because I did my due diligence. I owe
18 nothing, like I say now. So who am I going
19 to leave this fight up to? Well, not just
20 me, everyone. Because it pains us to our
21 soul. It hurts in our soul.

22 Because the aid is there. "Look, that
23 money is not yours. Do what you need to
24 do." Because with the money they've
25 allocated, it's enough to reestablish all

1 of Puerto Rico, I believe twice or three
2 times over.

3 So then, "No, pass by tomorrow." And
4 the other excuse is, "The evaluations
5 haven't arrived." Since I went -- the last
6 day that I went to Bayamón was on December
7 2. And it says here, "I am requesting a
8 solution for the issue of my housing." And
9 I am tired already. It's physical and
10 emotional.

11 Because -- and I tell them, "Look, you
12 all live in nice houses. You would like
13 your children, your family to pass -- I am
14 not the daughter or neighbor or friend of
15 the governor or mayor. I am a daughter of
16 God. Listen to our voices because that's
17 what you're here for." Because they're
18 getting paid. They are not there for free.
19 So, I think that the longer they take to
20 solve our problems, they are charging for
21 that. Because they are not there for free.

22 So who do I have to wait for to get
23 something solved, and not only me. Because
24 when I arrived by plane, I saw Puerto Rico
25 full of blue tarps. That's what you see,

1 tarps and no roofs.

2 So who am I waiting for -- today I
3 came here to see if you can help us. If
4 our voice can travel beyond in order to
5 know. Because the money is here.

6 CHAIR CANTÚ: (In Spanish) Anything
7 else?

8 MS. MÁRQUEZ: No, no. That I hope
9 you help us. That this voice -- we who
10 came here to expose and that -- because I
11 never thought I'd be here, but I did it
12 because of my needs, their needs.

13 Oh, and another thing, they want to
14 send help to social services, for them to
15 be -- listen, in the rural areas in the
16 center of the island, there are still
17 people who go to bed without food. The
18 food stamps there -- help does not arrive.
19 Legislate towards that, that they go in
20 there, to the center of Puerto Rico, where
21 there are still people who cook over wood,
22 that don't have a stove, what don't have
23 anything to eat. See that, the need of
24 the poor, because that is not being seen.

25 And appoint people to government

1 Andrés Santiago Cruz. I am the owner of
2 Abuelito's Construction, centralled in
3 Grand Rapids, Michigan. Originally, when I
4 was called here by my stepmother, I could
5 not come immediately. I was working for
6 the Chicago Public Schools.

7 During the 2017, 2018 winter break I
8 was able to come. Of course, it was not a
9 vacation. It was to come here and fix the
10 driveway roof, the three apartments that my
11 father made for my stepmother so that she
12 could live and be able to sustain herself.

13 At that time, she was alone.
14 Everybody move out from the apartments.
15 Her family left to the Dominican Republic.
16 And the two tenants were not able to stay
17 in the apartments; they were destroyed.

18 When I arrived, I was working for the
19 Chicago Public School. And I always get
20 contracts on the side as a contractor. I
21 came here so exhausted that when I looked
22 at the job, I was like, "Oh, my God. How
23 I'm going to do this?" I went to sleep. I
24 remember I woke up in the morning -- and
25 sometimes you have to rest to see what you

1 need to do -- and I told my stepmother that
2 I would fix Uva's apartment, one of her
3 coworkers, so that he could move in. And
4 fix the "marquesina" (driveway), the roof
5 to the "marquesina" and the gate to the
6 marquesina, because she felt unsafe. There
7 was a lot a crime during that time as well.

8 I was able to, within those two
9 weeks -- she even told me to, "Go to
10 Yabucoa, go to Moca". Like I usually would
11 do during the Holidays. I told her, "No,
12 Caguas. Me to stay right here", you know,
13 with her. And she saw me working very
14 hard.

15 Then I was told -- I would come
16 frequently after that 2018 school break.
17 Where I came up to maybe six times
18 afterwards to fix the other apartment. To
19 fix another apartment that its roof was
20 leaking, and to do many other repairs. I
21 actually was able to find Interamericana,
22 and I became a student here at the law
23 school.

24 And back then, my stepmother mentioned
25 that, you know, she would give me money

1 when FEMA comes. Until today, I have not
2 received any funds. I don't know what to
3 do. I know we've been taking care of the
4 title matter with the property. And it has
5 become a matter were I'm still waiting for
6 the title of the property. I'm sure many
7 people here in Puerto Rico, like me, do not
8 even know what to do until today. I've
9 heard many discussions.

10 And I think that it's very important
11 to give these resources so that we can know
12 how to submit our receipts, our expenses,
13 the labor that we pay for. So that if
14 there is funds available for us, even
15 the -- have claims today, they can show the
16 proof of the work they've done, and how can
17 we do that.

18 CHAIR CANTÚ: (In English) Thank
19 you.

20 MR. SANTIAGO: (In English) Thank you.

21 CHAIR CANTÚ: (In Spanish) Your name?

22 MS. HINOJOSA: (In English) Hi. My
23 name is Jennifer Hinojosa and I'm the
24 director of research for the Center for
25

1 Puerto Rican Studies at CUNY Hunter
2 College. But thank you for the opportunity
3 to present you before my testimony as a
4 researcher on FEMA's role in disaster
5 preparedness and response to Hurricane
6 María in Puerto Rico.

7 My role is to manage projects related
8 to Puerto Ricans in Puerto Rico and the
9 U.S. mainland and to integrate GIS
10 capabilities at the Center for Puerto Rican
11 Studies. As a geographer by training, my
12 second role is to develop, with my team,
13 GIS platforms such as web map applications,
14 and to integrate Puerto Rico's social,
15 demographic disaster and economic related
16 data with GIS mapping capabilities to
17 address the current and future challenges
18 related to post Hurricane María.

19 Therefore, to get to the point, data
20 is very important, especially reliable
21 data. And especially to see if any civil
22 rights implications to disaster relief were
23 violated, especially among the marginalized
24 and isolated communities who are often
25 overlooked.

1 Therefore, we need the following.

2 Data sets collected by FEMA should include
3 geographic distributions of individuals by
4 race, color, national origin, age, and
5 disability status and language. We need
6 data related to denied FEMA claims to see
7 where they were denied and if this is
8 really and truly a CENTRO or rule issue.
9 For example, it's difficult to know who and
10 where FEMA claims were denied and who did
11 not receive any access to aid. This is
12 valuable insight and a much needed one
13 today.

14 We need better data transparency and
15 data standardization when collecting
16 information from individuals and households
17 seeking aid, especially when it comes to
18 location, but at the same time protecting
19 identities and locations.

20 I would like to note, we've been
21 fortunate at times in via for a request, to
22 develop a communication line with FEMA in
23 obtaining data, but it's still not enough.

24 To end this, it is important to
25 systematically synchronize data collection

1 and develop a user-friendly platform to
2 enable not only researchers, but also
3 community leaders, advocacy groups and
4 community residents, citizens, nonprofits
5 who are on the ground, to access such
6 important information related to disasters
7 in their own communities and the impact it
8 had on their homes. Thank you.

9 CHAIR CANTÚ: (In English) Thank you.
10 Thank you very much.

11 (In Spanish) Your name?

12 MS. IRIZARRY: (In Spanish) Good
13 afternoon. My name is Mrs. Modesta
14 Irizarry.

15 CHAIR CANTÚ: (In Spanish) Welcome.

16 MS. IRIZARRY: (In Spanish) Thank you.

17 CHAIR CANTÚ: (In Spanish) Don't
18 cry.

19 MS. IRIZARRY: (In Spanish) It is an
20 honor for me to be here alongside my fellow
21 speakers. While listening to the prior
22 speaker, I've remembered everything we've
23 gone through because of Hurricane María.
24 But above all other things, I want to thank
25 you for this space, this opportunity we are

1 given today. I would like to thank the
2 folks at Ayuda Legal Puerto Rico the
3 invitation, as well as the other speakers
4 during the morning session, who have been a
5 great support to our communities, and we
6 must recognize the work they have been
7 carrying out during all this time.

8 I have been sad because it is very
9 unfortunate to have to recall all the
10 situations that our country and communities
11 have gone through, where, during a moment
12 of tragedy, with the resources and funds
13 that arrived, the funds approved, our
14 people could be better off than they were.

15 Unfortunately, as we have expressed in
16 the forums, corruption has hurt our
17 country, with all the money that has been
18 embezzled and misused, which was assigned
19 to help our people have decent housing and
20 good health benefits. And that due to the
21 insistence of a federal agency such as
22 FEMA, insisting on not providing aid to
23 people because they lacked access to a
24 document, property deeds, and with such a
25 strict protocol in the midst of a tragedy,

1 where many people profited from the pain of
2 the communities in order to gain personal
3 benefit, which is still the result we have
4 today with our government. We must say
5 that thanks to the efforts of non-profit
6 organizations, we were able to help our
7 communities move forward.

8 It is very sad to have seen so much
9 hidden food, so much aid that was received
10 from different places to help the people to
11 be okay in the midst of such a terrible
12 crisis.

13 As I've expressed previously, we have
14 people living in the mountains who, up
15 until today, do not have the necessary
16 health, transportation services, and
17 services and access to a school where our
18 children can learn. The same thing is
19 happening in many communities presently.

20 It is extremely sad to see, on a
21 personal basis, how seniors request from
22 community leaders such as ourselves, who
23 have one-on-one access with the people,
24 still don't have the ability to repair
25 their homes or that there are not human

1 resources to do it.

2 Because of this, we demand that our
3 people have proper housing. That our
4 elderly not have to be begging for the
5 services they deserve. That our health
6 services be the best. Better
7 transportation. There are many towns that
8 do not have proper transportation yet.
9 Loiza only has AMA bus service and public
10 transportation is still not available.

11 Educational services need to be
12 improved. With all the funds that this
13 agency has received, our children are still
14 spending very little time in schools, even
15 with the situation which has occurred.

16 Experiences such as Tu Hogar Renace,
17 which was terrible, how they stole so much
18 money to repair a toilet at exorbitant
19 costs like 1,000, 2,000 dollars. for
20 something that didn't even cost hundreds of
21 dollars, or 200 dollars. This is why all
22 of this needs to be evaluated.

23 Media and communication.
24 Telecommunications such as telephone, local
25 radio stations, are still charging citizens

1 as if they provided good services, which is
2 not correct.

3 Because of this, on this afternoon I'd
4 like to highlight the superhuman efforts of
5 our community leaders and non-profit
6 organizations. My applause and respect to
7 my coworkers who today gave a shining
8 example for Hurricane María. And we are
9 still doing it.

10 I would also like to thank an
11 organization who is still helping us today,
12 Caritas de Puerto Rico, for their service.
13 Today we are still distributing food
14 supplies. Because people believe that
15 poverty has to do with malnourished
16 children, poorly dressed, living on the
17 streets. And one must carefully read the
18 report on poverty in our country, which was
19 published recently.

20 So thank you. And I would like to
21 request respect for each citizen of Puerto
22 Rico, so that they don't have to be begging
23 the United States for anything, nor
24 Congress, because we are human beings.
25 Thank you.

1 CHAIR CANTÚ: (In Spanish) Thank
2 you.

3 (In English) We have a speaker.

4 COMMISSIONER YAKI: (In English) I just
5 want to make a little --

6 CHAIR CANTÚ: Very brief.

7 COMMISSIONER YAKI: Yes. I'm just
8 going to say for Andrés and -- I can't
9 remember here. I'm so sorry.

10 CHAIR CANTÚ: ¿Modesta?

11 COMMISSIONER YAKI: If you were --
12 have instances where you filed with FEMA
13 and you didn't hear anything, or your
14 mother -- your mother did, make sure that
15 you give your contact information to
16 someone on our staff back there. So that
17 we can take a look at that, possibly, for
18 you.

19 CHAIR CANTÚ: (In Spanish) If you
20 have any unanswered requests, please,
21 give us those reports and put it in
22 writing and -- we need that. Si ustedes
23 pidieron solicitud y nadie les contestó,
24 por favor, darnos esos informes y ponga
25 algo por escrito y -- we need that. What
 you know

1 is something very important to us.

2 MS. IRIZARRY: (In Spanish) There were
3 people who were approved supposed loans and
4 never received the money.

5 CHAIR CANTÚ: (In English) Yes. Yes.

6 MS. MÁRQUEZ: (In Spanish) I never
7 received anything. My house doesn't -- I
8 lost -- I mean, I have a refrigerator, a
9 stove, everything -- everything I lost is
10 still there. I have no roof. I have
11 nothing. I don't have where to tie a tarp
12 from. I don't have a place to tie a tarp
13 from.

14 CHAIR CANTÚ: (In English) But when
15 you all write a complaint, or when you all
16 write about what you -- what you wrote
17 today, if you can think of more things to
18 put down on paper for us, we will really
19 look forward to hearing that.

20 MR. SANTIAGO: (In English) Is this
21 the email to send it before the time?

22 CHAIR CANTÚ: (In English) Yes.

23 COMMISSIONER YAKI: (In English) You do
24 that.

25

1 CHAIR CANTÚ: (In English) Yes, please.

2 (In Spanish) Is there anyone else who
3 would like to present their...?

4 Yes, sir. Say your name, please.

5 MR. ROSADO: (In English) My name is
6 William Rosado Ramos. My number is 15.
7 Please -- I'm going to continue in Spanish.

8 CHAIR CANTÚ: Yes. (In Spanish)
9 Please do so.

10 MR. ROSADO: (In Spanish) I am a
11 senior citizen, as we are called. I am
12 starting this stage in life, only 69.
13 Aside from that, handicapped. I am in
14 functional diversity, as you can tell. I
15 live on a dead-end street. Of all the
16 homes, mine is the last, where everyone
17 has to make the turn to exit.

18 At this time I can tell you all that
19 I haven't seen one person, not from my
20 country, nor from the United States, nor
21 from any place, that has come by to ask me
22 how I am doing. Nobody has brought a
23 plate of food.

24

25 I've asked for assistance, because I

1 used to have a person during three years
2 who did housework. Cooking, washing
3 clothes. And sometimes, when I was
4 bedridden, this person would also help me
5 take baths.

6 It's shameful that in this day and
7 age, we have to come here to declare things
8 everyone knows. This is nothing new. And
9 this should not only be in Puerto Rico, I
10 know that many states are going through the
11 same thing. But it is unreasonable and
12 inhumane to have people begging, asking for
13 favors, when they gave their lives.
14 Because I was also in the military. What
15 good is it to have served in the military
16 or in public service here in Puerto Rico,
17 when one finds oneself abandoned.

18 The children I raised, they all left
19 Puerto Rico. They don't want to even hear
20 about Puerto Rico. They feel
21 uncomfortable. They feel rejected,
22 humiliated. So, they live where they think
23 they can grow. They are working. There
24 are two who have churches; they are giving
25 what they know.

1 But to come to Puerto Rico and see so
2 many blue tarps from the sky, and go house
3 by house -- where we can gain access,
4 because there are places where you still
5 can't go in. They are inaccessible.

6 In my house I have cracks and I
7 received 25,000 dollars to begin repairs.
8 At the end I was told, "Your house needs to
9 be torn down, but the cost to do that and
10 build a new house is over 200,000 dollars.
11 Wouldn't you rather we help you find a new
12 place to move to? We can give you 250,000
13 but you have to go."

14 I said, "But I've lived here for over
15 35 years. I feel comfortable here. Why do
16 I have to leave a place I know for
17 somewhere unknown?"

18 And I still haven't been able to begin
19 to pay back SBA for the 25,000 loan. And
20 the pandemic came and I became stuck on all
21 sides. And I am eager to pay off that
22 debt. It's not that I can't stand it, but
23 I feel uncomfortable about not receiving
24 help or assistance from anyone.

25 And all the money that I have, I have

1 to invest in repairing cracks, in the
2 removal of debris and to do wonders in my
3 home. Because the person who helped me at
4 home left to Texas. Now she's in New York.
5 I mean, I don't understand.

6 "Puerto Rico does it better," that's
7 what they always say. But where? I'm
8 waiting for someone to tell me where they
9 do it better. Right now we have no
10 schools. We have to change our school
11 system. It's -- as we say here in good
12 Spanish -- "old fashioned." It doesn't
13 work. We need to use new strategies in
14 order to attract students to go to school.

15 For our senior citizens, we have to go
16 house by house and carry out a census to
17 see where they live, where they reside, if
18 they are eating, who is providing
19 assistance. If this census is not carried
20 out and a list of the locations of these
21 people is made, one of these days we'll get
22 another Maria and we'll lose more old
23 folks. If that is the strategy, to kill
24 off the old folks, then we do nothing. Sit
25 and wait.

1 In my opinion, we have to make drastic
2 changes in health, in schools, in the
3 elderly. How many children nowadays have
4 been affected after the passing of María
5 and are being admitted to hospitals.
6 Because they are getting sudden attacks and
7 they are admitted into the hospital, and
8 are being maintained by pills.
9 Medication -- everyone will soon be under
10 medication. Is there not a different way
11 to end the situation we are going through?

12 And forgive me if I'm overextending my
13 time limit. Am I doing okay timewise?

14 CHAIR CANTÚ: (In Spanish) Thank you
15 for your words.

16 MR. ROSADO: (In Spanish) Thank you.

17 CHAIR CANTÚ: (In Spanish) Thank you for
18 your words and for supporting your people.
19 Thank you.

20 Thank you for your words and for your
21 advocacy for your communities.

22 (In English) Am I missing any other
23 speakers?

24 (In Spanish) Is there anyone else who
25 has the intention of speaking?

1 (In English) Okay. Not hearing
2 anymore speakers, thank you all who have
3 contributed this far to the public comment
4 period. We are going to pause for a ten-
5 minute break -- we are done. Okay. I am
6 leading and they are leading me. Thank
7 you.

8 I would like to take this opportunity
9 to thank all the panelists, everyone who
10 took the time to join us today to submit
11 their public comment on this very important
12 topic. It's been tremendously informative.
13 And on behalf of the entire Commission, I
14 want to thank everyone who shared their
15 time today and their expertise and each
16 community member for sharing very personal
17 parts of their life.

18 I also want to thank the Commission
19 staff for the efforts they made in the last
20 few months to pull this briefing together
21 alongside with our partners here in Puerto
22 Rico. And I thank the staff, in advance,
23 because they are going to keep working, for
24 their efforts to distill the information
25 presented in this briefing and to

1 incorporate it into the report. I'm very
2 grateful for all this hard work.

3 The recording for this briefing -- the
4 record for this briefing will stay open for
5 the next 30 days. If panelists or members
6 of the public would like to submit
7 materials, they can submit them to the
8 Commission. But it can't be later than
9 January 10, 2020 [sic]. And the email to
10 send any updated information --

11 COMMISSIONER YAKI: 2022.

12 CHAIR CANTÚ: 2022, thank you.

13 The email address is
14 mariabriefing@usccr.gov or you can send it
15 regular mail to OCRE/Public Comments, to
16 the attention of María Briefing at the U.S.
17 Commission on Civil Rights. Our address in
18 Washington, DC is 1331 Pennsylvania Avenue
19 NW, Suite 1150, Washington, DC 20425.

20 We encourage the use of email for
21 providing the public comments. Do not come
22 to the office. Do not drop by. You will
23 not find me at the office because due to
24 COVID, we all are going to be safe. And we
25 are going to continue to wear our masks

1 until we are told that everyone has been
2 protected and it is safe. So, thank you
3 all. And the briefing has ended.

4

Appendix D Texas State Advisory Committee (SAC) Report

Government Response to Hurricane Disasters



**An Advisory Memorandum of the
Texas Advisory Committee to the
U.S. Commission on Civil Rights**

March 2021

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Acknowledgements

The Texas Advisory Committee wishes to thank the speakers who participated in its public meetings, as well as the organizations and individuals who submitted written comments in connection with our investigation. The Committee also wishes to thank U.S. Commission on Civil Rights intern, Kimberly Henry, for her significant contributions and leadership in this project.

Advisory Memorandum

To: The U.S. Commission on Civil Rights

From: The Texas Advisory Committee to the U.S. Commission on Civil Rights

Date: March 2021

Subject: Government Response to Hurricane Disasters

The Texas Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) convened a series of online public meetings in November and December of 2020 to hear testimony regarding the local, state, and federal government response to hurricane disasters, specifically Hurricane Harvey, which made landfall on August 25, 2017, near Rockport, Texas.

The following advisory memorandum (“The Memorandum”) results from the testimony provided during the virtual panels, as well as related testimony submitted to the Committee in writing during the relevant period of public comment. The Memorandum begins with a brief background of the issue to be considered by the Committee, and then identifies primary findings as they emerged from the testimony. Finally, the Committee conveys its recommendations for addressing related civil rights concerns. The Memorandum is intended to focus specifically on the local, state, and federal government response to hurricane disasters, specifically Hurricane Harvey. While other important topics may have surfaced throughout the Committee’s inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion. The Memorandum and the recommendations included within it were adopted unanimously by the Committee on March 15, 2021.

Texas Advisory Committee to the U.S. Commission on Civil Rights

Mimi Marziani, Chair

Merrill Matthews, Vice-Chair

Joni Baker

Josh Blackman

Charles Burchett

Rogene Calvert

Frances Carnot

Jason Casellas

Cecilia Castillo

Bobby Lydia

Christina Sanders

Ron Smeberg

Barbara Walters

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Background

Federal Emergency Management Agency (FEMA)

The Federal Emergency Management Agency (FEMA) was established to coordinate the federal government's role in preparing for, preventing, mitigating the effects of, responding to, and recovering from all domestic disasters, whether natural or man-made, including acts of terror.¹ FEMA is regulated by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (“Stafford Act”), signed into law November 23, 1988.² This Act constitutes the statutory authority for most federal disaster response activities. The Act was amended further as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and Related Authorities as of June 2007.

In the event of a major disaster, the Governor of a state or territory may request the President declare that a major disaster or emergency exists, thus activating an array of federal programs to assist in the response and recovery effort.³ Section 308 of the Stafford Act, as amended, includes provisions for ensuring that the distribution of supplies, the processing of applications, and other relief and assistance activities are accomplished in an equitable and impartial manner without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.⁴ The Stafford Act also makes compliance with FEMA regulations a prerequisite to participation by other bodies in relief operations. Specifically, as a condition of participation in the distribution of assistance or supplies under this act, governmental bodies and other organizations are required to comply with regulations relating to nondiscrimination.

Among other things, in operating a FEMA-assisted program, a recipient government agency receiving FEMA disaster funds cannot, on the basis of race, color, religion, disability, nationality, sex, English proficiency, age, or economic status, either directly or through contractual means:

- Deny access to program services, aids, or benefits; or
- Provide a different service, aid, or benefit, or provide them in a manner different than they are provided to others; or
- Segregate or separately treat individuals in any matter related to the receipt of any service, aid, or benefit.

Prior to Hurricane Harvey FEMA’s Office of Equal Rights (“OER”) focused on providing a discrimination-free workplace for FEMA employees while also providing guidance and support to government officials and the American people to mitigate the occurrence of discrimination in disaster recovery.⁵ However, it was not until after Hurricane Harvey that FEMA established the

¹ Federal Emergency Management Agency Website. *About the Agency*. History, <https://www.fema.gov/about-agency>.

² 42 U.S.C. § 5121 (1988).

³ Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and Related Authorities § 401(a), 42 U.S.C. § 5170 (2013).

⁴ Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and Related Authorities § 308, 42 U.S.C. § 5170 (2013).

⁵ Leslie Saucedo, testimony, *Web Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, December 10, 2020, transcript, p. 2 (hereafter cited as *Transcript V*).

FEMA External Civil Rights Division (ECRD) specifically to address discrimination claims made by survivors and advocates.⁶

Once established, FEMA's ECRD received 98 discrimination complaints specific to Hurricane Harvey mostly from individual survivors.⁷ Of those complaints, FEMA's ECRD concluded that almost 25% were not civil rights related because the complainant did not specifically identify which protected class was the basis of discrimination.⁸ The other 75% of complaints identified at least one and, in some cases, multiple, protected class bases. The most common complaint was discrimination based on race, followed by economic status and disability. All but two of the 98 allegations received were closed without an investigation.⁹

ECRD Director Leslie Saucedo reported during a web hearing that these 96 allegations were closed for one of two reasons: either the individuals elected not to proceed after being advised of the process or the complaints were closed after their underlying concerns were addressed during a limited inquiry which explained FEMA's program and decisions. The two complaints that were filed and investigated were ultimately resolved.¹⁰ The Office for Civil Rights and Civil Liberties at the United States Department of Homeland Security received one civil rights discrimination claim, but the complaint was closed after the allegation was unable to be substantiated.¹¹ Ms. Saucedo also explained that most civil rights concerns that arose following Hurricane Harvey were addressed without formal investigations or compliance reviews.¹² Following initial assistance denial and then appeal denial, the only option left for a survivor seeking FEMA assistance is to sue.¹³

The Stafford Act, The Public Readiness and Emergency Preparedness Act, The Disaster Recovery Reform Act of 2018 and associated programs describe specific groups of people or protected classes who are more predisposed to potential harm and/or have a history of being discriminated against. Although all survivors of a natural disaster are vulnerable, there are certain marginalized populations who face additional challenges and barriers, i.e., people with disabilities who do not have access to accommodations like wheelchairs, oxygen, or safe environments helpful to their mental illness. Throughout this report, where not identifying a specific group, the Committee will refer to these protected populations, which include race, individuals with disabilities, the elderly, immigrants, and low socioeconomic communities, as marginalized populations.

Hurricane Harvey

On August 25, 2017, Hurricane Harvey made landfall near Rockport, Texas, as a Category 4 hurricane with disastrous 150-mile-per-hour winds. After it weakened and slowed, the storm stalled over the Houston area for the next four days. Harvey dropped a record-shattering 34 trillion

⁶ Saucedo Testimony, *Transcript V*, p. 3.

⁷ Saucedo Testimony, *Transcript V*, p. 3.

⁸ Saucedo Testimony, *Transcript V*, p. 3.

⁹ Saucedo Testimony, *Transcript V*, p. 4.

¹⁰ Saucedo Testimony, *Transcript V*, p. 4.

¹¹ Saucedo Testimony, *Transcript V*, p. 3-4.

¹² Saucedo Testimony, *Transcript V*, p. 6.

¹³ Stephanie Duke, testimony, *Web Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, November 12, 2020, transcript, p. 24 (hereafter cited as *Transcript II*).

gallons of rainfall on Southeast Texas. Beaumont, Texas received over 60 inches of rainfall, slightly more than Houston. The storm caused nearly 780,000 Texans to evacuate their homes.

Ultimately, Harvey was the second most costly hurricane in U.S. history with \$125 billion in losses, and it caused at least 103 deaths. More than half a million households across the region applied for FEMA assistance in the aftermath of the hurricane.¹⁴ In the wake of Hurricane Harvey, FEMA designated 41 Texas counties for individual assistance and 53 counties for public assistance. In addition to FEMA programs, the U.S. Department of Housing and Urban Development (“HUD”) allotted more than \$5 billion in Community Development Block Grant Disaster Recovery (CDBG-DR) funds for Texas. These funds are provided as flexible grants by HUD to help cities, counties, parishes, and states recover from presidentially declared disasters, especially in low- and moderate-income areas.¹⁵ Funds are made available to states, units of general local governments, Indian tribes, and insular areas designated by the President of the United States as disaster areas.¹⁶

A specific example of a federal program implemented in the Hurricane Harvey recovery efforts is the FEMA manufactured housing unit (MHU) program. The MHU program sends what is known as “FEMA trailers” to disaster areas but it was mismanaged and prevented other programs from assisting disaster survivors. When a FEMA trailer was either unavailable or inaccessible, The City of Houston Housing and Community Development office offered to put an accessory dwelling unit on a survivor’s property during their home’s necessary post-disaster renovations. The City of Houston claimed this plan would also be less expensive than the cost of bringing in one FEMA trailer. FEMA will not provide aid to properties with accessory dwelling units because it is only authorized to provide temporary housing, and the accessory dwelling units do not have a chassis to allow this option because the accessory dwelling units are intended to be provided immediately following the storm, which HUD claims is not its designated time frame for recovery assistance.¹⁷

At the local level, Texas’ General Land Office (“GLO”) was responsible for allocating Harvey recovery funds to local governments. The GLO partnered with the University of Texas at Austin to develop the regional Methods of Distribution (“MOD”) for housing (Homeowner Assistance Program and Local Buyout/Acquisition Program) and to build infrastructure developments to remediate future disasters. The MODs for these allocations used census data, FEMA Individual Assistance data, FEMA Public Assistance data, and measurement of the impact of Hurricane Harvey to distribute funds. In both housing and infrastructure, the MODs established a balance between the total unmet need, the ability to recover, and the relative population of impacted areas.¹⁸ Regional boards known as Councils of Governments drew up the plans for distributing

¹⁴ Jie Wu, testimony, *Web Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, December 1, 2020, transcript, p. 21 (hereafter cited as *Transcript III*).

¹⁵ U.S. Department of Housing and Urban Development Website. *Programs of HUD*. Community Development Block Grants (Disaster Recovery Assistance). Found at: <https://www.hud.gov/hudprograms/disaster-recovery>.

¹⁶ Texas General Land Office Website. *Community Development Block Grant – Disaster Recovery (CDBG-DR) Overview*. Found at: <https://recovery.texas.gov/local-government/resources/overview/index.html>.

¹⁷ McCasland Testimony, *Transcript I*, p. 15.

¹⁸ McCasland Testimony, *Transcript I*, p. 15.

CDBG-DR funds for housing. There are 24 Councils of Government across Texas, each one representing multiple counties.¹⁹

However, in a letter to Shaun Davis, Executive Director of the Southeast Texas Regional Planning Commission (SETRPC), from Madison Sloan, Director of Disaster Recovery and Fair Housing Project of Texas Appleseed, Sloan stated that SETRPC allocated funds based solely on level of inundation and total population in the inundated area without considering unmet need, ability to recover, or the relative population of the impacted area.²⁰ Sloan stated that “this distribution is blatantly inequitable and inconsistent with damage data.” For example, Port Arthur would receive only about twice as much funding as cities with less than 1% of its population. Beaumont will receive less than twice the funding of cities that are 0.5% of its size.²¹ Sloan concluded that this distribution of funds disproportionately benefitted White and wealthy residents.

In addition, the GLO established a minimum grant award of \$1 million. The GLO did not explain how or why this minimum was established. As a result, small cities which submitted requests for \$1 million or more received disproportionately large allocations. For example, Taylor Landing, (a city of about 237 people, of which 87.3% are non-Hispanic White) with a median income of \$45,390 and with 22 people (9%) impacted, was approved for an allocation of \$1,333,160, or \$151,495.45 per home (\$60,598 per impacted person). Bevil Oaks (which is 81.8% non-Hispanic White), received \$2 million, or over \$4,000 per affected person. In Port Arthur (a city that is 38.2% Black, 31.8% Hispanic, and 22% non-Hispanic White), the figure was \$85 per home, and in Beaumont (a city which is 34% non-Hispanic White, 48% Black, and 14.4% Hispanic), the figure was \$41.²² Many small communities with primarily marginalized populations did not have the resources or expertise to prepare a funding proposal, or needed assistance in amounts less than \$1 million, which eliminated them from the process.

In its written testimony submitted to the Committee, the GLO denied the allegation of racial disparity, stating that of the 22 cities and counties allocated funds, Port Arthur received the highest allocation.²³ Further, each city and county must spend at least 70 percent of their funds to benefit low- and moderate-income persons. However, the SETRPC’s MOD did not include a plan to meet the 70 percent low- and moderate-income benefit requirement, and as described above, disproportionately benefitted higher income, smaller and primarily White communities. The “storm impact” methodology used did not consider unmet need, ability to recover, and relative population.²⁴ Sloan commented that “low-income communities and communities of color are

¹⁹ Texas General Land Office Website. Local Buyout & Acquisition. Found at: <https://recovery.texas.gov/local-government/programs/local-buyout-acquisition/index.html>.

²⁰ Letter from Madison Sloan Director, Disaster Recovery and Fair Housing Project at Texas Appleseed to Shaun Davis, Executive Director at Southeast Texas Regional Planning Commission. *Re: Texas Appleseed Comments on SETRPC’s Hurricane Harvey Round 1 Method of Distribution*. July 20, 2018. Found at: <https://www.texasappleseed.org/sites/default/files/7-20-18%20TA%20comments%20on%20SETRPC%20MOD.pdf>

²¹ *Ibid.*

²² Karen Paup, Co-Director, Texas Housers & Texas Low Income Housing Information Service, Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights, November 11, 2020, at 2. (hereinafter Paup Statement).

²³ Sarah Douglas, Intergovernmental Relations, Texas General Land Office, Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights, January 15, 2021, at 1 (hereafter GLO Statement).

²⁴ Letter from Madison Sloan Director, Disaster Recovery and Fair Housing Project at Texas Appleseed to Shaun Davis, Executive Director at Southeast Texas Regional Planning Commission. *Re: Texas Appleseed Comments on SETRPC’s Hurricane Harvey Round 1 Method of*

disproportionately affected by and have a harder time recovering from disasters because of both geographic and social vulnerability forced on them by segregation, discrimination, and often the cumulative effects of previous disaster, on wealth and access to opportunity. Failure to consider these issues is a failure to comply with the obligation to affirmatively further fair housing.”²⁵

On August 25, 2018, Harris County voters approved \$2.5 billion in bonds to finance flood damage reduction projects.²⁶ These funds, along with additional federal funds such as CDBG-DR funds, will result in an estimated \$4.8 billion in infrastructure improvements.²⁷ In May 2020, the Harris County Commissioners Court approved details and modifications to the 2018 Bond Program, including issuing its prioritization framework and establishing its plan for equitable distribution of funding.²⁸

Despite Harvey being a massive event that affected over 45% of Houstonians, losses of homes and damage to homes were larger in lower income neighborhoods.²⁹ In the Houston area, 30,000 survivors remained displaced a year after the storm.³⁰ Specifically, at that time, 25% of a combined population of White residents and higher income residents reported their lives still severely disrupted from the storm. By comparison, approximately 40% of low-income residents and Black residents reported their lives were severely disrupted one year later.³¹ Furthermore, 27% and 20% of Hispanic and Black people, respectively, stated their living conditions a year after Hurricane Harvey were not safe, compared with 11% of Whites.³²

Various research foundations, government agencies, and nonprofits analyzed Hurricane Harvey. The common area discussed in various data analysis reports covers 24 of the 41 counties that were declared as a federal disaster area. The 24 counties selected were the counties most impacted by Hurricane Harvey and were home to 7.95 million people (94% of the impacted population).³³ Some of the analyses are referenced in the findings of this Memorandum. Race and ethnicity data were very diverse in this focused area, with the population being 40% White, 36% Hispanic, 16% Black, 6% Asian, and 2% others. Economic status was also diverse with 15% of the population in the 24

Distribution. July 20, 2018. Found at: <https://www.texasappleseed.org/sites/default/files/7-20-18%20TA%20comments%20on%20SETRPC%20MOD.pdf>

²⁵ *Ibid*.

²⁶ Harris County Flood Control District Website. *2018 Bond Program*. Found at: <https://www.hcfd.org/2018-bond-program>.

²⁷ *Ibid*.

²⁸ Harris County Flood Control District. *Prioritization Framework for the Implementation of the Harris County Flood Control District 2018 Bond Projects*. August 27, 2019. Found at: https://www.hcfd.org/Portals/62/Resilience/Bond-Program/Prioritization-Framework/final_prioritization-framework-report_20190827.pdf?ver=2019-09-19-092535-743.

²⁹ Pablo Pinto Testimony, *Transcript III*, p. 14.

³⁰ Pinto Testimony, *Transcript III*, p. 13.

³¹ Liz Hamel, testimony, *Web Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, December 3, 2020, transcript, p. 4 (hereafter cited as *Transcript IV*).

³² Hamel Testimony, *Transcript IV*, p. 4; Pinto Testimony, *Transcript III*, p. 14.

³³ Liz Hamel et al., “One Year After the Storm: Texas Gulf Coast Residents’ Views and Experiences with Hurricane Harvey Recovery,” August 2018, p. 3, https://www.episcopalhealth.org/wp-content/uploads/2020/01/EHFKFF_Hurricane_Harvey_anniversary_survey_report.pdf; The Kaiser Family Foundation and Episcopal Health Foundation, *One Year After the Storm: Texas Gulf Coast Residents’ Views and Experiences with Hurricane Harvey Recovery*, p. 3, available at: https://www.episcopalhealth.org/wp-content/uploads/2020/01/EHFKFF_Hurricane_Harvey_anniversary_survey_report.pdf.

counties officially designated as living in poverty.³⁴ In this same area, approximately 25% of these residents were immigrants.³⁵

Although Hurricane Harvey occurred over three years ago, it continues to burden Texas families. The most recent data from the summer of 2020 by the University of Houston School of Public Affairs found that 20% of Houstonians have not fully recovered from Harvey's consequences.³⁶

Racial Disparities

Communities of color have the fewest resources, face the longest, deepest paths to recovery, and are more vulnerable to the stress and shocks caused by a natural disaster.³⁷ Recovery varies by race and ethnicity: White respondents reported lower rates of losses (2.6%) and higher rates of recovery; 7% of African American respondents and 8% of Hispanics reported having recovered little or not at all.³⁸

In a 2018 study, researchers from Rice University and the University of Pittsburgh found that FEMA aid increased wealth inequality, stating, "These findings are disconcerting because such damages are widespread; they are projected to increase dramatically over coming years; and FEMA aid—as currently administered—appears to exacerbate the problem."³⁹

Based on historical disaster trends, FEMA designated 100-year flood zones across the country to show zones with higher risk of flooding compared to those outside the zone. However, regardless of which side of the zone marginalized populations reside, they face disparities during and after disasters. Black and Hispanic residents in Harris County outside the flood zone were flooded at disproportionately higher rates during hurricane Harvey than White residents.⁴⁰ This was particularly true in the city of Houston, where these groups, as well as immigrants, traditionally live on low lying land because of historic segregation and discriminatory housing policies, with neighborhoods that experienced decades of disinvestment, such as poor storm water infrastructure.⁴¹

Areas of need with scarce capacity to recover are often overlooked for mitigation projects.⁴² For example, because of the proximity of low-income communities of color to environmental hazards, historic disinvestment, and segregation, the home values in these neighborhoods are much less than comparable homes in areas that are less flood prone. The locally administered buyouts offered

³⁴ Liz Hamel et al., "One Year After the Storm: Texas Gulf Coast Residents' Views and Experiences with Hurricane Harvey Recovery," August 2018, https://www.episcopalhealth.org/wp-content/uploads/2020/01/EHFKFF_Hurricane_Harvey_anniversary_survey_report.pdf.

³⁵ Bryan Wu et al., "Hurricane Harvey: The Experiences of Immigrants Living in the Texas Gulf Coast," March 2018, <http://files.kff.org/attachment/Report-Hurricane-Harvey-The-Experiences-of-Immigrants-Living-in-the-Texas-Gulf-Coast>.

³⁶ Pinto Testimony, *Transcript III*, p. 14.

³⁷ Maddie Sloan, testimony, *Web Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, August 20, 2020, transcript, p. 4 (hereafter cited as *Preliminary Hearing*); Sarah Saadian Testimony, *Transcript II*, p. 13; Wu Testimony, *Transcript III*, pp. 20-21.

³⁸ Pinto Testimony, *Transcript III*, pp. 14-15.

³⁹ Junia Howell & James R. Elliott, "Damages Done: The Longitudinal Impacts of Natural Hazards on Wealth Inequality in the United States." *Social Problems*, Volume 66, Issue 3, August 2019, Pages 448–467, <https://doi.org/10.1093/socpro/spy016>

⁴⁰ Wu Testimony, *Transcript III*, p. 20.

⁴¹ Wu Testimony, *Transcript III*, p. 20.

⁴² Rebecca Hersher and Robert Benincasa, "How Federal Disaster Money Favors the Rich." *Houston Public Media*. March 5, 2019. Found at: <https://www.npr.org/2019/03/05/688786177/how-federal-disaster-money-favors-the-rich>.

to these homeowners are often not enough to help them afford new homes away from flood zones.⁴³

At this time, there is minimal disaggregated FEMA data that would provide insight on disaster response or verify that procedures and operations are equitable.⁴⁴ For example, a recently passed Texas law⁴⁵ makes the addresses of disaster survivors confidential. Without being able to analyze what areas and locations received what help, it is impossible for advocates to assess whether aid is being distributed equitably.⁴⁶

People with Disabilities

Harris County, Texas' most populous county, is home to 410,000 people with disabilities; 215,000 in the city of Houston alone.⁴⁷ Cognitive impairment was the most prevalent type of disability for minors, and for those 18 years of age and older, ambulatory difficulty and independent living difficulty were the top two most prevalent types of disability.⁴⁸ Sixty-two percent (62%) of persons with a disability over the age of 16 are Hispanic, Black, or another non-White race or ethnicity in Harris County.⁴⁹

There have been concerns over the response of local officials to the specific needs of the nearly 861,000 people with disabilities in the area damaged by the storm during and after Hurricane Harvey.⁵⁰ FEMA has “no way of knowing” how many people with disabilities were impacted by the hurricane, agency spokesperson Lauren S. Hersh said in an email to the Texas Tribune.⁵¹ There is also no data to show how many individuals with disabilities filed for assistance following Hurricane Harvey. However, data has been released that show 10,949 individuals with a disability of an unknown number of applicants were denied housing assistance because the residences were deemed safe to occupy.⁵² A disability disaster survivor hotline was operated by The Houston Mayor's Office for People and the Partnership for Inclusive Disaster Strategies for nine months following Hurricane Harvey. The administrators reported the hotline was overrun with requests from survivors, some of whom waited hours or even days before receiving helpful information or being evacuated.⁵³

Disaster Recovery Workers

A report from the Great Cities Institute at the University of Illinois found that in just the first four weeks after Hurricane Harvey, more than one-quarter (26%) of day laborers were victims of wage

⁴³ Ibid.

⁴⁴ Elena White Testimony, *Transcript III*, p. 9; Saadian Testimony, *Transcript II*, p. 18; Duke Testimony, *Transcript II*, p. 24.

⁴⁵ Acts 2019, 86th Leg., R.S., ch. 1065, § 418.054(d) (2019)

⁴⁶ Rachel Zummo Testimony, *Transcript II*, p. 4.

⁴⁷ Gabe Cazares Testimony, *Transcript IV*, p. 19.

⁴⁸ Harris County Community Services Department. *Harris County Community Profile & Housing Market Analysis*. Found at: https://csd.harriscountytexas.gov/Documents/Section_3_Community_Profile_and_Market_Analysis.pdf.

⁴⁹ Harris County Community Services Department. *Harris County Community Profile & Housing Market Analysis*. Found at: https://csd.harriscountytexas.gov/Documents/Section_3_Community_Profile_and_Market_Analysis.pdf.

⁵⁰ U.S. Census Bureau. (2016). American Community Survey 5-year estimate.

⁵¹ Marissa Evans. “After Harvey, questions remain about whether registry helped people with disabilities.” *The Texas Tribune*. Aug. 22, 2018. Found at: <https://www.texastribune.org/2018/08/22/did-state-registry-help-people-disabilities-during-harvey/>

⁵² Stephanie Duke, Attorney, Disability Rights Texas, *Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights*, November 25, 2020, at p. 4 (hereinafter Duke Statement).

⁵³ Evans. *The Texas Tribune*. Aug. 22, 2018.

theft, including being underpaid for overtime.⁵⁴ The same report found that 85% of day laborers who worked in hurricane-affected areas reported that they did not receive any training for the worksites they entered nor were they informed of the risks related to mold and working in contaminated water.⁵⁵ Ultimately, this led to a third of those respondents being injured on the job due to unsafe conditions, lack of protective equipment, and pressure to work faster.⁵⁶

Furthermore, immigrant workers were much more likely to be employed as informal day-laborers in the extensive demolition and construction following Hurricane Harvey. Dangerous working conditions, poverty wages, and chronic wage theft for immigrant workers in the construction industry is already common without a disaster and are only worsened in the wake of a large-scale disaster.⁵⁷

Overview of Testimony

The Texas Advisory Committee is comprised of Texas citizens who strove to evaluate the local, state, and federal government response to hurricane disasters, specifically Hurricane Harvey, from an open- minded and neutral posture. During a series of online panels, the Committee heard from academic experts, community advocates, federal, state, and local government officials, and directly impacted individuals. The agendas, minutes, and presentation slides for these panels can be found in Appendix A. The Committee also invited broad participation through written testimony and received a number of written statements offering supplemental information on the topic. Written testimony was accepted until January 15, 2021, when the official record was closed.⁵⁸

The Committee went to great lengths to solicit participation from stakeholders representing diverse perspectives. The Committee made many outreach attempts over several months to engage government agencies relevant to disaster response, including FEMA, HUD, South East Texas Regional Planning Commission, and the Texas Windstorm Insurance Association, soliciting their participation at the public meeting, through written testimony, and/or by joining a Committee meeting. Regrettably, after multiple attempts by Committee members and U.S. Commission on Civil Rights staff, the views of these stakeholders remain largely absent from this memorandum. A full list of individuals and organizations that were invited, but were unable or unwilling to participate, is attached in Appendix III.

Initially, FEMA's Office of External Affairs agreed to respond in writing to a list of questions compiled by the Committee. This written testimony was intended to complement the participation of the Director of FEMA's External Civil Rights Division. However, the Committee was later informed that they were unable to answer the questions in the given timeframe, and all the questions went unanswered. A full list of the questions can be found in Appendix VI.

⁵⁴ Nick Wertsch Testimony, *Transcript III*, p.14.

⁵⁵ Nick Wertsch Testimony, *Transcript III*, p.14.

⁵⁶ Katy Atkiss Testimony, *Transcript IV*, p.9; Wertsch Testimony, *Transcript III*, p.14.

⁵⁷ Wertsch Testimony, *Transcript III*, p.14.

⁵⁸ Written testimony submitted can be found in Appendix V.

Findings

The section below provides findings from the Committee’s work and reflects views of the cited panelists, not necessarily the members of the Committee. While the Committee has not independently verified each assertion, panelists were chosen to testify due to their professional experience, academic credentials, subject matter expertise, and/or first-hand experience with the topics at hand.

1. Experiencing a natural disaster, like Hurricane Harvey, exacerbates pre-existing systemic inequalities.
 - a. Data show that low-income and marginalized populations suffer more and are more vulnerable to natural disasters, have fewer recovery resources,⁵⁹ and are less able to rely on their neighbors and community programs than higher income residents.⁶⁰ Therefore, marginalized families living in more racially heterogeneous communities are automatically at a disadvantage compared to White, more affluent neighbors with respect to receiving aid and successfully recovering.⁶¹
 - b. Lack of access to information, low technology literacy, and/or limited English proficiency is common in immigrant communities and/or communities with low rates of education.⁶²
 - c. Race, directly or indirectly, affects the economic impacts of a natural disaster. Following Hurricane Harvey, 15% of White residents affected by the hurricane reported that a household member lost their job due to Harvey, compared to 33% of Black and Hispanic households.⁶³ Wage losses were more severe among nonwhite respondents and renters with an annual income below \$50,000.⁶⁴ Seventy-one percent (71%) of Hispanic respondents reported wage losses, compared to only 50% of White respondents.
 - d. The Houston-Galveston Area Council of Governments and other agencies utilize FEMA’s post disaster assessment criteria in their own aid decisions and program operations, therefore potentially extending inequalities in the hardest hit communities.⁶⁵ If the data are inaccurate, biased, misleading, or unclear, the factors and information used by other agencies can continue to exacerbate the

⁵⁹ Wu Testimony, *Transcript III*, p. 21; Sarah Douglas, Intergovernmental Relations, Texas General Land Office, Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights, January 15, 2021, at 1 (hereafter GLO Statement).

⁶⁰ Wu Testimony, *Transcript III*, p. 21.

⁶¹ Pinto Testimony, *Transcript III*, p. 15.

⁶² Ann Morse. “A Look at Immigrant Youth: Prospects and Promising Practices,” *National Conference of State Legislatures*, March 2005. Found at: <https://www.ncsl.org/research/immigration/a-look-at-immigrant-youth-prospects-and-promising.aspx>.

⁶³ Pablo Pinto, Director, Center for Public Policy, Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights, December 10, 2020, at p. 1 (hereinafter Pinto Statement).

⁶⁴ Pinto Testimony, *Transcript III*, p. 14; Pinto Statement, at 1.

⁶⁵ Chuck Wemple, testimony, *Web Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, November 10, 2020, transcript, p. 21 (hereafter cited as *Transcript I*).

harm to marginalized populations which have already experienced discrimination.

- e. The Gulf Coast region has very high rates of inherited property ownership, which occurs most often in minority and lower income families.⁶⁶ In the event of a natural disaster, it is challenging if not impossible to prove ownership without a copy of the will (if any) or other documentation to prove they are eligible for aid.⁶⁷
2. Inconsistent and inadequate policies, programs, and eligibility criteria create unnecessary, compounding challenges for already marginalized populations.
 - a. Trauma from disaster-related challenges experienced by marginalized populations leads to cumulative, negative mental health outcomes for many survivors.⁶⁸ This trauma and the subsequent mental health impacts can weigh heavier and remain longer for these populations when programs fail to address these impacts.
 - b. While higher income communities are more resilient⁶⁹ when disaster strikes, the lowest income and most marginalized survivors are often the hardest hit and most vulnerable to flooding because of where their homes are located.⁷⁰
 - c. After Hurricane Harvey made landfall, FEMA deployed one person to serve as a liaison for the 410,000 people with disabilities in Harris County.⁷¹
 - d. Although there are 145 languages spoken in Houston alone, when Hurricane Harvey made landfall, real-time information was rarely available except in English and Spanish.⁷² Even so, three in 10 residents in the 24 counties surveyed reported that it was either very or somewhat difficult to find information about recovery assistance in Spanish.⁷³ Houston government employees have access to a real time translation line, but many were not aware they had access to this service.⁷⁴
 - e. Lifesaving disaster preparedness information is not always accessible and/or understandable. Even when there are disaster preparation and recovery materials available, research has found they do not match the literacy and language skills of many adults.⁷⁵

⁶⁶ Saadian Testimony, *Transcript II*, p. 26.

⁶⁷ Sapna Aiyer Testimony, *Transcript II*, p. 7; Rachel Zummo Testimony, *Transcript II*, p. 3; Saadian Testimony, *Transcript II*, p. 13 & p. 26.

⁶⁸ Wu Testimony, *Transcript III*, p. 22.

⁶⁹ Karen Paup Testimony, *Transcript II*, p. 12.

⁷⁰ Sloan Testimony, *Preliminary Hearing*, p. 4; Saadian Testimony, *Transcript II*, p. 13, Wu Testimony, *Transcript III*, p. 20.

⁷¹ Cazares Testimony, *Transcript IV*, p. 19.

⁷² Atkiss Testimony, *Transcript IV*, p. 8.

⁷³ Hamel Testimony, *Transcript IV*, p. 5.

⁷⁴ Atkiss Testimony, *Transcript IV*, p. 8.

⁷⁵ Atkiss Testimony, *Transcript IV*, p. 8.

- f. FEMA overestimated how many trailers it would need for Hurricane Harvey efforts by 2,600 trailers, which cost \$152 million. Another \$29 million was wasted in transportation costs of the 2,400 tank and pump systems.⁷⁶
 - g. FEMA has no proactive post-disaster outreach. Already traumatized from a natural disaster, survivors are burdened with getting help themselves, regardless of known limitations due to disability, age, or location. Survivors must get to an aid location, request assistance, justify the need, and wait for approval or denial before a FEMA official will come to the home to address the emergency needs of the survivor, such as a wheelchair or oxygen tank.⁷⁷
 - h. FEMA focuses its disaster preparedness campaigns on encouraging residents to have insurance.⁷⁸ Since Hurricane Harvey, FEMA increased public education about the importance of buying insurance. However, the reason why families often do not have flood insurance is not a lack of education but rather the unaffordable cost of that insurance, climbing as high as \$2,200 per year.⁷⁹
3. Applications for recovery assistance are overly complicated and further separate marginalized populations from fairly and adequately receiving aid.
- a. Applying for aid was the top item people said they need help with after a disaster.⁸⁰ Only one in four applicants will complete the housing aid application process.⁸¹ Lawyers have described having to develop a “special skillset to navigate the system.” Therefore, applicants without access to legal services were at a disadvantage when seeking assistance.⁸²
 - b. The process is not transparent and lacks a reasonable accommodation process. There are case managers deployed by FEMA following a natural disaster to assist with the application process; however, these case managers are overstretched and performing multiple roles.⁸³ The burden to receive help is subsequently placed on the FEMA applicant.⁸⁴
 - c. Applications for aid and resources can be extensive, redundant, and only accessible online. This can be difficult for any survivor to navigate immediately

⁷⁶ Homeland Security Today, *FEMA Purchased More Manufactured Housing Units Than It Needed in Texas After Hurricane Harvey*, 2020, [https://www.hstoday.us/subject-matter-areas/emergency-preparedness/fema-purchased-more-manufactured-housing-units-than-it-needed-in-texas-after-hurricane-harvey/#:~:text=CBP%20photo\)-.FEMA%20Purchased%20More%20Manufactured%20Housing%20Units%20Than,in%20Texas%20After%20Hurricane%20Harvey&text=The%20Federal%20Emergency%20Management%20Agency,Office%20of%20Inspector%20General%20found](https://www.hstoday.us/subject-matter-areas/emergency-preparedness/fema-purchased-more-manufactured-housing-units-than-it-needed-in-texas-after-hurricane-harvey/#:~:text=CBP%20photo)-.FEMA%20Purchased%20More%20Manufactured%20Housing%20Units%20Than,in%20Texas%20After%20Hurricane%20Harvey&text=The%20Federal%20Emergency%20Management%20Agency,Office%20of%20Inspector%20General%20found).

⁷⁷ Saucedo Testimony, *Transcript V*, p. 6.

⁷⁸ The Gulf Coast has been affected by devastating hurricanes 64 times between 1851 and today. (National Weather Service. *The Official South Texas Hurricane Guide*. Found at: https://www.weather.gov/media/crp/Hurricane_Guide_Final_English.pdf) If residents received disaster assistance in the past and did not subsequently purchase flood insurance and/or make improvements to their housing, they were not eligible for federal assistance after Hurricane Harvey. The occurrence of storms is expected to rise, with 30 named storms occurring in the Atlantic in 2020, breaking previous years' records. (*Record-breaking Atlantic Hurricane Season Draws to an End*, National Ocean and Atmospheric Administration, November 25, 2020. <https://www.noaa.gov/media-release/record-breaking-atlantic-hurricane-season-draws-to-end>).

⁷⁹ Zummo Testimony, *Transcript II*, p. 3.

⁸⁰ Hamel Testimony, *Transcript IV*, p. 18.

⁸¹ Wemple Testimony, *Transcript I*, p. 23.

⁸² Zummo Testimony, *Transcript II*, p. 3; White Testimony, *Transcript III*, p. 9; Atkiss Testimony, *Transcript IV*, p. 9.

⁸³ Atkiss Testimony, *Transcript IV*, p. 9; White Testimony, *Transcript III*, p. 9; Stoecker Testimony, *Transcript III*, p. 5

⁸⁴ Duke Testimony, *Transcript II*, p. 10.

following a disaster, but it is disproportionately burdensome on disabled individuals, the elderly, those with little or no access to or proficiency with technology (e.g., the Internet), and people with limited English proficiency.⁸⁵ A significant barrier for some low-income survivors requesting aid is the requirement to produce numerous documents when they are already facing economic-related limitations such as lack of access to reliable technology and/or transportation.⁸⁶

- d. Low-income families and seniors in Houston are eligible and already receiving other forms of federal aid like Supplemental Nutrition Assistance Program (SNAP).⁸⁷ Allowing these other aid programs to qualify an applicant for disaster recovery funds would eliminate an unnecessary barrier to families receiving assistance.⁸⁸
 - e. Applications and other aid forms are translated using Google Translate rather than live person or proper document translation, leading to possible misunderstandings of crucial legal forms necessary to get help.⁸⁹
4. Aid distribution policies and decisions had a disparate impact on marginalized populations and contributed to widening wealth inequality.⁹⁰
- a. The more FEMA aid an area received, the more wealth inequality and racial disparity is increased.⁹¹ For example, 95% of homes in Port Arthur flooded, a city where 70% of residents are people of color and 22% are non-Hispanic White.⁹² Taylor Landing, a city that is 87% non-Hispanic White, received \$60,000 of relief funding per person; each Port Arthur resident received only \$84.⁹³ Although Texas GLO reported that Port Arthur received the highest allocation in the Hurricane Harvey Local Buyout and Acquisition Program,⁹⁴ the Port Arthur Mayor reported shortcomings, such as lack of funding for apartment repairs from Hurricane Harvey.⁹⁵
 - b. The three cities in the Southeast Texas region with the highest percent of Black non-Hispanic people were also allocated the lowest per capita funding for buyouts of flood-devastated homes. Nearby cities with an average non-Hispanic White population of 88% received the highest per-capita funding.⁹⁶
 - c. Disaster aid and recovery programs, especially FEMA's, do not necessarily consider the impact that disaster related hazards can have on specific individuals,

⁸⁵ Aiyer Testimony, *Transcript II*, p. 8.

⁸⁶ Tom McCasland Testimony, *Transcript I*, p. 8.

⁸⁷ McCasland Testimony, *Transcript I*, p. 4.

⁸⁸ McCasland Testimony, *Transcript I*, p. 4.

⁸⁹ Tomas Aguilar Testimony, *Transcript IV*, p. 6.

⁹⁰ Saadian Testimony, *Transcript II*, p. 14; Atkiss Testimony, *Transcript IV*, p. 7; Palay Testimony, *Transcript IV*, p. 12.

⁹¹ Chrishelle Palay Testimony, *Transcript IV*, p. 12.

⁹² Robert Grimm Testimony, *Transcript I*, p. 5; Paup Statement, at 2.

⁹³ Paup Statement, at 2.

⁹⁴ GLO Statement, at 2.

⁹⁵ Mayor Thurman Bartie, *Transcript I*, p. 25.

⁹⁶ Paup Statement, at 2.

and their health and safety, within their disaster damaged residence.⁹⁷ When these programs do not consider these factors, residents who are unable to make expensive home renovations that can withstand hurricane damage are left to deal with further damage, such as mold and leaks, years later.⁹⁸

- d. Many advocates recommended increasing training for aid program employees around the needs of people with disabilities and trauma informed care⁹⁹ at all levels of government.¹⁰⁰ Panelists raised concerns about inadequate training, inability to manage disability-related issues, inconsistency in filing procedures, and minimal supervision.¹⁰¹ For example, FEMA staff are required to take only a 30-minute training video on disability related matters.¹⁰²
- e. FEMA's "50% Rule"¹⁰³ disproportionately impacts Black and Hispanic people, elderly people, and people living with disabilities,¹⁰⁴ populations that do not necessarily have the means to fulfill these requirements, resulting in aid denial.
- f. In Houston, homes requiring a full rebuild are older homes¹⁰⁵ and disproportionately owned by minority individuals.¹⁰⁶ However, the value of a home could be justification for FEMA or HUD to not approve a rebuild. Therefore, residents are left to live in unsafe, unsanitary homes with the inevitability of a future disaster in the area.
- g. FEMA's habitability standard and process for determining eligibility is not practical for all survivors, especially those with disabilities who may need special accommodations like specifically angled ramps, wider opening doorways, and disability-accessible appliances. In a documented appeal, FEMA acknowledged the applicant had a disability, but declared it is ultimately the responsibility of the applicant to meet their own accessibility needs.¹⁰⁷
- h. Before Hurricane Harvey, a federal court found a disqualifying factor to receive aid known as "deferred maintenance," a standard of a resident not meeting a certain home standard pre-disaster, to be illegal. However, during Hurricane Harvey recovery, FEMA continued to apply the same standard using a different term- "pre-existing conditions."¹⁰⁸

⁹⁷ Duke Testimony, *Transcript II*, p. 9; Duke Statement, at 2.

⁹⁸ Palay Testimony, *Transcript IV*, p. 14.

⁹⁹ Atkiss Testimony, *Transcript IV*, p. 29.

¹⁰⁰ Cazares Testimony, *Transcript IV*, p. 11.

¹⁰¹ Zummo Testimony, *Transcript II*, p. 2 & p. 3; Duke Testimony, *Transcript II*, p. 10.

¹⁰² Duke Testimony, *Transcript II*, p. 10.

¹⁰³ FEMA's Substantial Improvement Rule and Substantial Damage Rule are also known as the "50% rule." This rule requires that when the cost of the project exceeds 50% of the building's market value, the building must be brought into compliance as if it were new construction. This also includes elevating the building if that is the current code for new construction.

¹⁰⁴ Zummo Testimony, *Transcript II*, p. 3.

¹⁰⁵ Wu Testimony, *Transcript III*, p. 25.

¹⁰⁶ Sloan Testimony, *Preliminary Hearing*, p. 5; Palay Testimony, *Transcript IV*, p. 12; Wu Testimony, *Transcript III*, p. 21; Aiyer Testimony, *Transcript II*, p. 6; Tom McCasland, Director, City of Houston Housing and Community Development Department, Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights, November 10, 2020, at 3. (hereinafter McCasland Testimony).

¹⁰⁷ Duke Testimony, *Transcript II*, p. 9 & 17; Duke Statement, at 2.

¹⁰⁸ FEMA Website. "Pre-disaster Conditions," <https://www.fema.gov/appeal/pre-disaster-conditions> (last accessed April 28, 2021).

- i. No single disaster aid program may be enough to cover all necessary recovery expenses. However, overly complicated policies to prevent duplication of benefits creates a massive barrier to residents moving forward with rebuilding and recovery.¹⁰⁹
5. Recovery construction workers, many of whom were immigrants, experienced high rates of wage theft following Hurricane Harvey, with little accountability from local or state agencies. There were also unsafe working conditions caused by a lack of both safety equipment and training.
 - a. Hurricane Harvey wage theft victims and construction workers exposed to dangerous work conditions are the least likely disaster recovery workers to come forward with a complaint.¹¹⁰
 - b. Protective devices, such as respirators, that were used in the Hurricane Harvey clean-up were being used long after the effective use period had ended. Workers devised creative ways to safeguard themselves against exposure to health hazards. For example, workers reported tying a tee shirt over their mouths and noses or devising other similar ways of safeguarding against exposure to health hazards.¹¹¹
 - c. One wage theft aid organization documented \$1.2 million in wage theft claims at about \$3600 per case (roughly 25% of the worker's annual take home pay).¹¹²
 - d. Texas is the only state that does not require companies to carry workers' compensation coverage, even during disaster recovery work.¹¹³ 34% of Hurricane Harvey day laborers reported being injured; 16% of those workers reported that they had received medical attention. However, 70% of these individuals covered medical expenses through personal insurance or, more commonly, paying these expenses directly themselves, not by the employer.¹¹⁴
 - e. Currently, there is no way to verify how many workers do not get compensation they are entitled to because there is no data to show how many didn't file a complaint out of fear, filed and lost.¹¹⁵
 - f. The contracting and sub-contracting chain set up during and after disasters often limited workers' legal claims to the smallest and less established contractors, while the larger, wealthier companies that have the ability and means to ensure proper pay and safety measures are not held liable.¹¹⁶

¹⁰⁹ McCasland Testimony, *Transcript I*, p. 6.

¹¹⁰ Wertsch Testimony, *Transcript III*, p.18.

¹¹¹ Nik Theodore, *After the Storm: Houston's Day Labor Markets in the Aftermath of Hurricane Harvey*, University of Illinois at Chicago, 9, November 2017, https://greatcities.uic.edu/wp-content/uploads/2017/11/After-the-Storm_Theodore_2017.pdf.

¹¹² Atkiss Testimony, *Transcript IV*, p.9.

¹¹³ Wertsch Testimony, *Transcript III*, p.14.

¹¹⁴ Nik Theodore, *After the Storm: Houston's Day Labor Markets in the Aftermath of Hurricane Harvey*, University of Illinois at Chicago, 9, November 2017, https://greatcities.uic.edu/wp-content/uploads/2017/11/After-the-Storm_Theodore_2017.pdf.

¹¹⁵ Nick Wertsch, Houston Staff Attorney, Workers Defense Project, Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights, February 23, 2021. (hereinafter Wertsch Testimony)

¹¹⁶ Wertsch Testimony, *Transcript III*, p.17.

6. Texas' large immigrant population faced distinct challenges in recovering from hurricanes and navigating disaster recovery programs.
 - a. 78% of possibly undocumented immigrants in the 24 hardest hit counties were affected by Hurricane Harvey, compared to fewer than 60% of immigrants with legal resident status and native-born residents.¹¹⁷
 - b. A survey conducted a year after Hurricane Harvey found that over 50% of immigrants impacted by the storm were more likely than native born residents (39%) to say they weren't getting the help they needed.¹¹⁸
 - c. FEMA requires aid applicants to provide information on every member of a household, not just a U.S. citizen or an eligible immigrant. Many mixed-status homes with eligible residents do not apply for aid for fear of identifying undocumented household members, including the 250,000 U.S. citizen children in the Houston area, as well as refugees.¹¹⁹
 - d. FEMA applications clearly state that information may be shared with other U.S. agencies, including U.S. Immigrations and Customs Enforcement (ICE).¹²⁰ 38% of immigrants who were possibly undocumented avoided seeking help in recovery because they were afraid of calling attention to their own or a family member's immigration status.¹²¹
 - e. The environment of mass shelters and other locations of assistance can deter immigrants from seeking help out of fear of deportation. For example, FEMA used trucks with the Department of Homeland Security logo labeled "police/rescue" to provide security with at least 200 ICE officers.¹²² Although it was reported that immigration and customs operations would not be conducted during Hurricane Harvey recovery efforts,¹²³ these trucks increased fear of seeking assistance, resulting in qualified residents not getting help.¹²⁴

7. HUD's policies, like FEMA's, for disaster housing assistance are inefficient and negatively impact mostly low-income people of color and/or people with disabilities, who are statistically less resourced.¹²⁵
 - a. Currently, there is no permanent statutory authority for Community Development Block Grant Disaster Recovery (CDBG-DR) assistance, funds that are often used to supplement major disaster programs like FEMA. This results in

¹¹⁷ Hamel Testimony, *Transcript IV*, p. 5.

¹¹⁸ Hamel Testimony, *Transcript IV*, p. 5.

¹¹⁹ Aiyer Testimony, *Transcript II*, p. 6; Atkiss Testimony, *Transcript IV*, p. 7.

¹²⁰ Aiyer Testimony, *Transcript II*, p. 6.

¹²¹ Hamel Testimony, *Transcript IV*, p. 5; Atkiss Testimony, *Transcript IV*, p. 7.

¹²² U.S. Department of Immigration and Customs Enforcement, *ICE Deploys Over 200 Personnel to Assist with Hurricane Harvey Rescue Efforts*, 2017, <https://www.ice.gov/news/releases/ice-deploys-over-200-personnel-assist-hurricane-harvey-rescue-efforts> (last accessed Mar. 7, 2021).

¹²³ U.S. Department of Immigration and Customs Enforcement, *ICE Deploys Over 200 Personnel to Assist with Hurricane Harvey Rescue Efforts*, 2017, <https://www.ice.gov/news/releases/ice-deploys-over-200-personnel-assist-hurricane-harvey-rescue-efforts> (last accessed Mar. 7, 2021).

¹²⁴ Atkiss Testimony, *Transcript IV*, p. 6.

¹²⁵ Zummo Testimony, *Transcript II*, p. 3.

new sets of state and local regulations that can be complicated for both HUD staff and assistance applicants.¹²⁶ CBDG-DR funds come much later in the recovery process,¹²⁷ and new regulations after each disaster only delay these funds even more.

- b. Multiple levels of government fear future HUD Inspector General audits, leading to the creation of more rules to protect their agency while causing significant delays and sometimes insurmountable hurdles for the low income and racially minority families these programs are intended to serve.¹²⁸
 - c. HUD does not directly aid renters but rather developers, reinforcing discrimination of low-income, largely minority populated areas and families.¹²⁹ Additionally, the approval rate for Hurricane Harvey assistance is lower for renters (34%) than for homeowners (46%). Homeowners were more likely to be approved than renters in seven out of the last nine disasters.¹³⁰
 - d. Fraud has not been shown to be a significant problem, especially among low-income seniors, but far more is spent on fraud prevention than what would be wasted due to fraud.¹³¹
 - e. In recent years, the Community Planning and Development (CPD) Inspector General received an amount of funding equal to its disaster recovery programs.¹³²
 - f. 42% of all residents in the hardest hit 24 counties stated they were not getting the help they needed in the first few months following the storm. That number rose to 55% of marginalized populations in those same counties.¹³³
 - g. The Disaster Housing Assistance Program (DHAP) provides temporary rental assistance and case management for low-income survivors with barriers to accessing FEMA's transitional sheltering assistance.¹³⁴ However, to be implemented in any disaster, both FEMA and HUD must agree to start up the program each time. FEMA has not agreed to do so since Hurricane Katrina.¹³⁵
8. The State of Texas Emergency Assistance Registry (STEAR), one of the largest state and local resource established to assist recovery operations for people with access and functional needs, was inadequate in fulfilling its purpose during Hurricane Harvey.

¹²⁶ McCasland Testimony, *Transcript I*, p. 9; Saadian Testimony, *Transcript II*, p. 19; GLO Statement, at 1.

¹²⁷ McCasland Testimony, *Transcript I*, p. 9; Saadian Testimony, *Transcript II*, p. 19.

¹²⁸ McCasland Testimony, *Transcript I*, p. 3.

¹²⁹ Zummo Testimony, *Transcript II*, p. 3.

¹³⁰ "Zip Codes with the Highest and Lowest Percent of Approved FEMA Applications" n.d.,

http://www.episcopalhealth.org/files/8415/1369/0866/Zip_Codes_with_the_Highest_Lowest_Percent_of_Approved_FEMA_Applications_Approved.pdf.

¹³¹ McCasland Testimony, *Transcript I*, p. 9.

¹³² McCasland Testimony, *Transcript I*, p. 11.

¹³³ Hamel Testimony, *Transcript IV*, p. 4.

¹³⁴ Saadian Testimony, *Transcript II*, p. 13 & p. 24.

¹³⁵ Saadian Testimony, *Transcript II*, p. 13 & p. 24.

- a. STEAR exists to give local emergency managers information about residents who may require additional assistance during an evacuation.¹³⁶ Unfortunately, despite having a disclaimer that assistance is not guaranteed, many who registered expected assistance or proactive contact during and after a disaster, but they did not receive it.¹³⁷
 - b. Following Hurricane Harvey, there is an increasing mistrust with STEAR, and many have refused to re-register.¹³⁸ This mistrust was also exacerbated when STEAR registrants were evacuated to mass shelters without accommodations rather than shelters focused on and equipped to address the needs of the people the program intended to serve.¹³⁹
 - c. Reregistration with STEAR is required every year with few, if any, reminders to do so. As a result, registration is normally done immediately following a disaster, which overloads the system, and as time passes, individuals do not reregister.¹⁴⁰
 - d. The management of STEAR is also inefficient as the database is not necessarily equipped with adequate registrant information requiring periodic reviews of the data to manually sort out any duplicates or verify contact information.¹⁴¹
9. Based on the lessons learned from Hurricane Harvey, local, state, and federal agencies reported that they made improvements to their disaster response operations and allocation of resources, including:
- a. Harris County implemented a \$2.5 billion bond project to finance flood damage reduction projects. Most notably, this new bond project will utilize a social vulnerability index as a way of prioritizing the most marginalized populations.¹⁴²
 - b. Houston's Mayor, Sylvester Turner, ensured the disability community was adequately represented in his resilience plan, released in February 2020, including establishing a STEAR Advisory Group. The disability community also has been more involved in the City of Houston evacuation hub exercises post-Hurricane Harvey.¹⁴³
 - c. Harris County and the City of Houston implemented higher recovery worker protection standards, including a \$15 minimum wage, workers' compensation insurance, mandatory safety training, and independent monitoring for all construction workers on county construction projects, including projects with federal disaster recovery funding.¹⁴⁴

¹³⁶ Cazares Testimony, *Transcript IV*, p. 10.

¹³⁷ Cazares Testimony, *Transcript IV*, p. 10.

¹³⁸ Cazares Testimony, *Transcript IV*, p. 10.

¹³⁹ Atkiss Testimony, *Transcript IV*, p. 24.

¹⁴⁰ Cazares Testimony, *Transcript IV*, p. 23; Aguilar Testimony, *Transcript IV*, p. 25.

¹⁴¹ Cazares Testimony, *Transcript IV*, p. 24.

¹⁴² Wertsch Testimony, *Transcript III*, p. 26

¹⁴³ Cazares Testimony, *Transcript IV*, p. 11.

¹⁴⁴ Wertsch Testimony, *Transcript III*, p. 18.

- d. Connective, a disaster recovery and preparedness nonprofit serving the Texas Gulf Coast region, was established to coordinate recovery programs for marginalized communities through a centralized intake process, which has increased the number of homes repaired after applying from 5% to 49%.¹⁴⁵
- e. The Hurricane Harvey Homeowner Assistance Program (HAP) by Texas' GLO was the largest CDBG-DR recipient with more than \$1.3 billion allocated to the program, and benefitting more than 4,100 residents in 48 counties for construction on their home. Of the approved HAP applicants, 34% are Black, 35% Hispanic, 24% White, and 7% other.¹⁴⁶
- f. FEMA has revised its assistance application to allow applicants with disabilities to disclose their functional or access needs.¹³⁵ However, this disclosure does not guarantee FEMA will effectively address the applicants' unique needs, but rather it is used to match applicants with additional assistance for completing the application.¹⁴⁷
- g. FEMA's Office of Equal Rights deployed an unknown number of civil rights leads, advisors, and specialists during Hurricane Harvey for the first time. The External Civil Rights Division was created to oversee all personnel and external civil rights functions, including policies, training, complaints processing, compliance reviews, and community outreach. Its 86 employees include leads, advisors, and sign language interpreters.¹⁴⁸ These 86 employees engaged with only 87 of the 98 survivors and organizations that contacted FEMA and the Office of Equal Rights claiming civil rights disparities.¹⁴⁹

¹⁴⁵ White Testimony, *Transcript III*, p. 7 & p. 23.

¹⁴⁶ GLO Statement, at 2.

¹⁴⁷ Duke Statement, at 1.

¹⁴⁸ Saucedo Testimony, *Transcript V*, p. 4.

¹⁴⁹ Saucedo Testimony, *Transcript V*, p. 5.

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.¹⁵⁰ In keeping with these responsibilities, and in consideration of the oral and written testimony received on this topic, the Texas Advisory Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to Congress and the President to pass legislation to:
 - a. Modify policies and/or procedures that enable discriminatory practices.
 - i. Adopt and define each of the protected classes in the Stafford Act according to their specific governing law, e.g., The Americans with Disabilities Act’s definition of “disability.”
 - ii. Allow proof of eligibility in other government aid programs such as Medicaid, Supplemental Security Income (SSI), or Temporary Assistance for Needy Families (TANF) to automatically qualify individuals and families for aid following a disaster for all federal emergency management programs.
 - iii. Require a “reallocation recommendation” for all federal, state, and local aid to recommend where remaining funds should be used. The Houston-Galveston Area Council of Governments currently utilizes this and can be referred to as a model.
 - b. Implement new or modify current operating procedures and policies to improve disaster recovery response from federal agencies including, but not limited to:
 - i. Approve the Reforming Disaster Recovery Act of 2019 (S.2301) bill that codifies CDBG-DR requirements into statute.
 - ii. Amend the Stafford Act to require that all federally funded emergency response, recovery, and reconstruction work be done in compliance with the federal prevailing wage laws.
 - iii. Require FEMA to enter into an Interagency Agreement (IAA) with HUD to allow HUD to set up the Disaster Housing Assistance Program as quickly as possible following a disaster.

¹⁵⁰ 45 C.F.R. § 703.2 (a).

- iv. Establish or connect agency database tools to share relevant information needed in applying for disaster recovery to improve application processing timelines.
 - v. Establish an agency or department, like Harris County, Texas’s Department of Economic Equity, to develop proactive plans for government agencies to protect workers’ rights during reconstruction, including dedicated funding for the protection of reconstruction workers’ rights, coordination across government agencies, collaboration with worker centers and workers’ rights advocates on the ground, and outreach to communities of workers to provide safety training and know-your-rights workshops.
 - vi. Implement independent, third-party monitoring of compliance with federal worker protection laws and standards, including extensive outreach to workers, worker’s rights education, and gathering information directly from workers regarding their working conditions. A successful monitoring model recommended by advocates is the program implemented during Hurricane Sandy in New York.
- c. Require all federal, state, and local agencies receiving aid assistance or grant monies to implement the following or similar standards to improve the aid application process for disaster survivors:
- i. Utilize a social vulnerability index, like the Center for Disease Control’s, to determine aid approval and amount.
 - ii. Adopt the Americans with Disabilities Act’s definition of “disability.”
 - iii. Provide timely, actionable information that includes resource options, special needs assistance contact information, and feasible, life-saving tips available in both large print and the top six languages¹⁵¹ of a disaster area.
 - iv. Create a widely distributed, thorough, and valid feedback and evaluation system of application and aid systems with data analysis that is shared publicly.
 - v. Expand efforts and enforcement to prevent wage theft and improve the working conditions of disaster recovery workers.
- d. Strive to improve communication and access to resources for survivors in all disaster recovery agencies and programs.
- i. Require consistent, public criteria that clearly defines aid eligibility, the

¹⁵¹ U.S. Department of Justice, Civil Rights Division, Federal Coordination and Compliance Section. 2011. “Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs.” Available at: https://www.lep.gov/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf

application process, resources, and options for survivors following a disaster, e.g., a flow chart.

- ii. Display and distribute information of specialized services to applicants who have unique needs or requirements.
 - iii. Adopt the method of a centralized-intake process and resource center in the planning and implementation of new policies and procedures.
- e. Improve and increase oversight of programs and agencies receiving federal aid to ensure:
- i. Freedom of Information Act requests concerning a disaster survivor's application and/or documentation is responded to within 20 working days, as required Freedom of Information Act (FOIA).
 - ii. Valid data gathering, analysis, and assessment of federal emergency agency operations, practices, and aid applications and distribution is occurring on an annual basis.
- f. Allocate adequate funding for the following:
- i. Outreach to marginalized communities, including communities of color, neighborhoods with lower socio-economic status, immigrant populations, individuals with disabilities, and people with limited English proficiency.
 - ii. Interagency collaboration between government agencies and nonprofits.
- g. Allocate funding and direct federal disaster recovery agencies to implement the following staff management and operations improvements:
- i. Employ full-time employees that are subject matter experts in each of the protected classes throughout the year, regardless of disaster occurrences, to continue to enhance programs, processes, and approaches to disaster response with the goal of minimizing future discrimination.
 - ii. Establish deployable, civil rights outreach task forces and immediately activate them following a disaster. These task forces will:
 - 1. Be culturally competent and specially trained in all the protected classes, including common and special needs, available external resources, and challenges and solutions to completing the aid applications.
 - 2. Be reasonably proportionate to the protected classes' population in the disaster area.

3. Work directly with survivors and nongovernmental organizations to ensure they are connected and have the ability and access to receive resources that can fulfill survivors' needs.
 4. Be aware of specific, unique challenges experienced by certain protected classes, like individuals with a disability or the elderly.
 5. Include on the task force a member who is a translator or ensure that members of the task force have access to and are aware of translator services.
- iii. Increase civil rights-focused staff who have received special training concerning disability needs, Trauma Informed Care, mental health, and cultural needs and practices.
 - iv. Require a minimum standard of Continuing Education Units for all staff of government disaster recovery programs focused on the need to respond to diverse populations.
2. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the United States Department of Labor to:
 - a. Expand enforcement efforts to prevent wage theft and improve working conditions of disaster recovery workers.
 - i. Establish safety training standards, safety plans for contractor site management and apprenticeship opportunities.
 - ii. Require disaster recovery contractors and subcontractors to carry worker's compensation insurance.
 - iii. Require general contractor liability for workers' rights abuses committed by their subcontractors.
 - iv. Require that any recipient of disaster recovery money must meet the state's prevailing wage requirements.
 - v. Set specific targets for the number of Section 3¹⁵² workers and apprentices who must be employed on a particular jobsite and be employed as W-2 employees rather than 1099 contractors, providing additional protection against wage theft.
 - vi. Implement independent, third-party monitoring of compliance with state

¹⁵² 12 U.S.C. §1701u (2015); Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low-income residents in connection with projects and activities in their neighborhoods.

and local worker protection laws and standards, including extensive outreach to workers, worker's rights education, and gathering information directly from workers regarding their working conditions. A successful monitoring model recommended by advocates is the program during Hurricane Sandy in New York.

3. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the United States Department of Homeland Security, FEMA, to:
 - a. Increase transparency in pre-disaster and post-disaster assistance to reduce survivor trauma and mitigate challenges to receiving aid, including:
 - i. Allocating funding specifically for outreach to marginalized communities, including communities of color, neighborhoods with lower socio-economic status, immigrant populations, individuals with disabilities, and people with limited English proficiency.
 - ii. Establishing a division within the agency solely to conduct data gathering, analysis, and assessment of agency operations, agency practices, and aid applications and distribution by the following (at a minimum): demographics, protected classes, locations, and different disasters. This extensive data shall be presented publicly on at least an annual basis.
 - iii. Improve communication and access to resources for survivors to ensure all survivors have an equitable opportunity for recovery assistance.
 1. Establish a consistent, public criteria to define aid eligibility, application process, resources, and options for survivors following a disaster, e.g., a flow chart.
 2. Provide public notice of specialized services to applicants who have unique needs or requirements.
 3. Provide translators and increase awareness of real-time language translation services and allow all disaster recovery agencies to utilize it.
 - b. Modify policies and/or procedures that enable discriminatory practices.
 - i. Repeal the policy of forwarding aid applications to other federal government agencies, including Immigration, Customs, and Enforcement. Update all necessary materials and application information to reflect the change.
 - c. Implement new tools and enhance the current aid application process.

- i. Clearly outline the standards, expectations, and decision-making factors in disaster recovery aid and assistance, e.g., a flow chart.
- ii. Adopt and define each of the protected classes in the Stafford Act according to their specific governing law, e.g., The Americans with Disabilities Act's definition of "disability."
- iii. Develop and implement criteria that allow for special hardship factors, such as the loss of job due to the disaster and unique needs or challenges of the individual residents, on applications, e.g., wheelchair mobility.
- iv. Implement a Habitability Standard which does not take into account the pre-disaster condition of residences, which can be applied consistently and fairly by all decision-makers, and which can be customized based on the specific needs of individual residents.
- v. Restructure decision letters to applicants to clearly state whether an applicant is "eligible and will be receiving aid," "ineligible for a clearly stated reason," or "more information or documentation is needed prior to a final decision," including what specifically is needed.
- vi. Establish and implement a centralized-intake process and resource center similar to Connective's¹⁵³ disaster response following Hurricane Harvey.
- vii. Create an alternative for applicants who do not have an official, legal copy of ownership or title of the property on which they reside for which they are requesting aid for. Two examples are provided below:
 1. Accept current state procedures for acknowledging proof of ownership or title of property of applicant residents. For example, Texas allows documentation with the current homestead exemption form to be filed as an affidavit with property records to verify and certify property ownership or title.
 2. Create or apply an already state and/or county established affidavit to attest under penalty of perjury to establish ownership of home.
- viii. Ensure requests for applications by applicants and advocates with a signed authorization of release of information receive the requested application and/or documentation within 20 working days as required by the Freedom of Information Act (FOIA).
- ix. Establish an efficient, thorough, and valid feedback and evaluation system for applicants, agencies, and advocates to use regarding the

¹⁵³ Connective is a disaster recovery, and preparedness nonprofit serving the Texas Gulf coast region that was established after Hurricane Harvey to provide centralized intake and recovery resources for disaster survivors.

application process. This information should be analyzed and shared in an annual report.

- d. Collaborate with other federal and state agencies to apply best practices in disaster recovery efforts.
 - i. Enter into an Interagency Agreement (IAA) with HUD to allow HUD to set up the Disaster Housing Assistance Program as quickly as possible following a disaster.
 - ii. Utilize a social vulnerability index, like the Center for Disease Control's, rather than property value when conducting and determining damage assessment.
 - iii. Implement clear policies that will allow proof of eligibility in other government aid programs, such as Medicaid, Supplemental Security Income (SSI), or Temporary Assistance for Needy Families (TANF) to automatically qualify individuals and families for aid following a disaster.
 - iv. Connect agency databases to share relevant information needed in applying for disaster recovery to improve application processing timelines. For example, paperwork and information needed for a federal aid program like Medicaid could be similar and relevant to a FEMA aid application.
 - v. Require a "reallocation recommendation" to recommend where remaining funds should be used. The Houston-Galveston Area Council of Governments currently utilizes this and can be referred to as a model.
- e. Increase current resources and establish divisions within emergency management programs to facilitate services for highest-risk residents and populations with greater barriers to recovery.
 - i. Employ full-time employees who are subject matter experts in each of the protected classes throughout the year, regardless of disaster occurrences, to continue to enhance programs, processes, and approaches to disaster response with the goal of minimizing future discrimination.
 - ii. Establish deployable, civil rights outreach task forces and immediately activate them following a disaster. These task forces will:
 - 1. Be culturally competent and specially trained in all the protected classes, including common needs, available external resources, and aid application challenges and solutions.

2. Be reasonably proportionate to the protected classes' population in the disaster area.
 3. Work directly with survivors and nongovernmental organizations to ensure they are connected and have the ability and access to receive resources that can fulfill the survivors' needs.
 4. Be aware of specific, unique challenges experienced by certain protected classes like individuals with a disability and the elderly.
 5. Include a member of the task force who is a translator or have immediate access to translator services.
- iii. Increase civil rights focused staff who have relevant training dedicated to addressing civil rights concerns including disability needs, Trauma Informed Care, mental health, and cultural requirements and practices.
 - iv. Require a minimum standard of Continuing Education Units for all staff of government disaster recovery programs focused on the need to respond to diverse populations.
- f. Reduce the attention and resources given to fraud prevention and duplication of benefits.
 - i. Remove restrictions on local and county governments and nongovernmental agencies that prohibit them from reimbursing assistance agencies when survivors used the initial assistance to meet urgent needs, such as food and medical care, rather than, for example, house repairs, which then makes the residents ineligible for further agency assistance.
 - ii. Allow local and county governments to address the gaps in a survivor's overall recovery without risk of negatively impacting that survivor's ongoing claim with FEMA and/or HUD. For example, any gaps less than \$5,000 can be waived for any family at 80% of the Area Median Income (AMI) or below.
4. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the United States Department of Housing and Urban Development to:
 - a. Implement statutory, permanent regulations for CBDGR funds for all disasters.
 - b. Increase transparency in pre-disaster and post-disaster assistances to reduce survivor trauma and mitigate challenges to receiving aid, including:
 - i. Allocate funding specifically for outreach to marginalized communities, including, communities of color, neighborhoods with lower socio-economic status, immigrant populations, individuals with disabilities,

and people with limited English proficiency.

- ii. Establish a division within the agency solely to conduct data gathering, analysis, and assessment of agency operations, agency practices, and aid applications and distribution by the following (at a minimum): demographics, protected classes, locations, and different disasters. This extensive data shall be presented publicly on at least an annual basis.
- iii. Improve communication and access to resources for survivors to ensure all survivors have an equitable opportunity for recovery assistance.
 1. Establish a consistent, public criteria that clearly identifies aid eligibility, the application process, available resources, and options for survivors following a disaster, e.g., a flow chart.
 2. Provides public notice of specialized services to applicants who have unique needs or requirements.
 3. Provide translators and increase awareness of real-time language translation services and allow all disaster recovery agencies to utilize it.
- c. Implement new tools and enhance the current aid application process.
 - i. Clearly outline the standards, expectations, and decision-making factors in disaster recovery aid and assistance, e.g., a flow chart.
 - ii. Adopt and define each of the protected classes in the Stafford Act according to their specific governing law, e.g., The Americans with Disabilities Act’s definition of “disability.”
 - iii. Develop and implement criteria that allow for special hardship factors, such as the loss of job due to the disaster and unique needs or challenges of the individual residents, on applications, e.g., wheelchair mobility.
 - iv. Implement a Habitability Standard which does not take into account the pre- disaster condition of residences which can be applied consistently and fairly by all decision-makers and which can be customized based on the specific needs of individual residents.
 - v. Implement a centralized-intake process and resource center similar to Connective’s¹⁵⁴ disaster response following Hurricane Harvey.

¹⁵⁴ Connective is a disaster recovery and preparedness nonprofit serving the Texas Gulf coast region that was established after Hurricane Harvey to provide centralized intake and recovery resources for disaster survivors.

- vi. Create an alternative for applicants who do not have an official, legal copy of ownership or title of the property on which they reside and for which they are requesting aid. Two examples are provided below:
 - 1. Accept current state and/or county procedures for acknowledging proof of ownership or title of property of applicant residents. For example, Texas allows documentation of the current homestead exemption form as an affidavit with property records to verify and certify property ownership or title.
 - 2. Create or accept an existing state or county established affidavit to attest under penalty of perjury to show ownership of home.
- vii. Ensure requests for applications by applicants and advocates with a signed authorization for release of information receive the requested application and/or documentation within 20 working days as required Freedom of Information Act (FOIA).
- viii. Establish an efficient, thorough, and valid feedback and evaluation system for applicants, agencies, and advocates to use regarding the application process. This information should be analyzed and shared in an annual report.
- d. Collaborate with other federal and state agencies to apply best practices in disaster recovery efforts.
 - i. Enter into an Interagency Agreement (IAA) with FEMA to allow HUD to set up the Disaster Housing Assistance Program as quickly as possible following a disaster.
 - ii. Utilize a social vulnerability index, like the Center for Disease Control's, rather than utilizing property value when conducting and determining damage assessment.
 - iii. Implement clear policies that will allow proof of eligibility in other government aid programs, such as Medicaid, Supplemental Security Income (SSI), or Temporary Assistance for Needy Families (TANF) to automatically qualify individuals and families for aid following a disaster.
 - iv. Connect agency databases to share relevant information needed in applying for disaster recovery to improve application processing timelines. For example, paperwork and information needed for a federal aid program like Medicaid could be similar and relevant to a HUD aid application.

- v. Require a “reallocation recommendation” to recommend where remaining funds should be used. The Houston-Galveston Area Council of Governments currently utilizes this and can be referred to as a model.
- e. Increase current resources and establish divisions within emergency management programs to facilitate services for highest-risk residents and populations with greater barriers to recovery.
 - i. Employ full-time employees who are subject matter experts in each of the protected classes throughout the year, regardless of disaster occurrences, to continue to enhance programs, procedures, and approaches to disaster response with the goal of minimizing future discrimination.
 - ii. Establish deployable civil rights outreach task forces and immediately activate them following a disaster. These task forces will:
 - 1. Be culturally competent and specially trained in all the protected classes, including common and special needs, available external resources, and aid application challenges and solutions.
 - 2. Be reasonably proportionate to the protected classes’ population in the disaster area.
 - 3. Work directly with survivors and nongovernmental organizations to ensure they are connected and have the ability and access to receive resources that can fulfill survivors’ needs.
 - 4. Be aware of specific, unique challenges experienced by certain protected classes such as individuals with a disability or the elderly.
 - 5. Include a member of the task force who is a translator and/or have immediate access to translator services.
 - iii. Increase civil rights focused recovery staff who have received training on disability needs, Trauma Informed Care, mental health, and cultural requirements and practices.
 - iv. Require a minimum standard of Continuing Education Units for all staff of government disaster recovery programs focused on the need to respond to diverse populations.
- f. Reduce the attention and resources given to fraud prevention and duplication of benefits.
 - i. Remove restrictions on local and county governments and nongovernmental agencies that prohibit them from reimbursing assistance agencies when survivors used initial assistance to meet urgent needs, such

as food and medical care, rather than, for example, house repairs, which then makes the residents ineligible for further agency assistance.

- ii. Allow local and county governments to address the gaps in a survivor's overall recovery without risk of negatively impacting that survivor's ongoing claim with FEMA and/or HUD. For example, any gaps less than \$5,000 can be waived for any family at 80% of the Area Median Income (AMI) or below.
5. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the Texas State Governor and Texas Legislature to:
- a. Amend the law allowing landlords the option to disclose to renters previous flooding. Require landlords to disclose previous flooding to prospective renters.
 - b. Establish and implement a certification program to allow local partners or community-based organizations to assist with local families applying for aid, e.g., the San Antonio Housing Authority.
 - c. Establish a document-saving database and, in collaboration with organizations such as STEAR and MetroLyft, to effectively utilize these records to provide disaster assistance.
 - d. Increase transparency in pre-disaster and post-disaster assistance to reduce survivor trauma and mitigate challenges to receiving aid, including:
 - i. Allocating funding specifically for outreach to marginalized communities, including communities of color, neighborhoods with lower socio-economic status, immigrant populations, individuals with disabilities, and people with limited English proficiency.
 - ii. Establishing a division within the Texas Department of Emergency Management solely to conduct data gathering, analysis, and assessment of state emergency response agency operations, practices, and aid applications and distribution by the following (at a minimum): demographics, protected classes, locations, and different disasters. This extensive data shall be presented publicly on at least an annual basis.
 - iii. Developing and implement a disaster preparation plan, emergency response plan, and periodic emergency drills for high disaster-prone areas.
 - iv. Improving communication and access to resources for survivors to ensure all survivors have an equitable opportunity for recovery assistance.

1. Establish consistent, public criteria that clearly defines aid eligibility, application processes, available resources, and options for survivors following a disaster, e.g., a flow chart.
 2. Provide public notice of specialized services to applicants who have unique needs or requirements.
- v. Providing numerous promotional and educational materials in high traffic areas where people who may be or should be in the STEAR system, e.g., SSI Offices, Nursing Home, etc.
 - vi. Providing more funding for STEAR and maintain data year-round in order to improve data management and allow case managers to use time more effectively.
 - vii. Sharing changes, improvements, and expectations of the new, updated STEAR system by the Houston Mayor's Office of Disabilities to increase trust and participation of survivors.
 - viii. Providing translators and increase awareness of real-time language translation services and allow all disaster recovery agencies to utilize it.
- e. Expanding enforcement efforts to prevent wage theft and improve working conditions of disaster recovery workers.
- i. Increase safety training standards, safety plans for contractor site management, and apprenticeship opportunities.
 - ii. Require disaster recovery contractors and subcontractors to carry Worker's Compensation Insurance.
 - iii. Require general contractor liability for workers' rights abuses committed by their subcontractors.
 - iv. Require that any recipient of disaster recovery money must meet the state's prevailing wage requirements.
 - v. Set specific targets for the number of Section 3 workers and apprentices who must be employed on a particular jobsite and be employed as W-2 employees rather than 1099 contractors, providing additional protection against wage theft.
 - vi. Model Harris County's newly established Department of Economic Equity throughout the state to develop proactive plans for government agencies to protect workers' rights during reconstruction, including dedicated funding for protection of workers' rights, coordination across government agencies, collaboration with worker centers and workers'

rights advocates on the ground, and outreach to communities of workers to provide safety training and know-your-rights workshops.

- vii. Implement independent, third-party monitoring of compliance with state and local worker protection laws and standards, including extensive outreach to workers, workers' rights education, and gathering information directly from workers regarding their working conditions. A successful monitoring model recommended by advocates is the program during Hurricane Sandy in New York.

6. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the State of Texas General Land Office to:

- a. Reduce the minimum amount of funds that can be requested by a locality to not higher than \$500,000.
- b. Review and ensure all Hurricane Harvey applications between the GLO and City of Houston are processed, and survivors are contacted regarding the status of their application. In the case of a lost or mishandled application during the 2020 transition of applications, allow applicants to resubmit an application.

7. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to all Regional Councils of Governments to:

- a. Coordinate with local schools, and if feasible, churches, to utilize their notification systems to disseminate emergency information.

Appendices

A. Panel Agendas, Minutes, and Presentation Slides

- a. August 20, 2020 Online Panel
- b. November 10, 2020 Online Panel
- c. November 12, 2021 Online Panel
- d. December 01, 2021 Online Panel
- e. December 03, 2021 Online Panel
- f. December 10, 2021 Online Panel

B. Transcripts

- a. August 20, 2020 Online Panel (AKA Preliminary Transcript)
- b. November 10, 2020 Online Panel (AKA Transcript I)
- c. November 12, 2021 Online Panel (AKA Transcript II)
- d. December 01, 2021 Online Panel (AKA Transcript III)
- e. December 03, 2021 Online Panel (AKA Transcript IV)
- f. December 10, 2021 Online Panel (AKA Transcript V)

C. Written Testimony

D. List of Individuals and Organizations Invited, but Declined to Participate

E. Questions Submitted to FEMA which were not Answered

Appendix A – Panel Agendas, Minutes, and Presentation Slides

August 20, 2020 Online Panel

November 10, 2020 Online Panel

November 12, 2021 Online Panel

December 01, 2021 Online Panel

December 03, 2021 Online Panel

December 10, 2021 Online Panel

Documents found at:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1RYL0h1cnJpY2FuZSBIYXJ2ZXkvQXBwZW5kaXggQQ%3D%3D

Appendix B – Panel Transcripts

August 20, 2020 Online Panel; Preliminary Panel

November 10, 2020 Online Panel; Transcript I

November 12, 2021 Online Panel; Transcript II

December 01, 2021 Online Panel; Transcript III

December 03, 2021 Online Panel; Transcript IV

December 10, 2021 Online Panel; Transcript V

Documents found at:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1RYL0h1cnJpY2FuZSBIYXJ2ZXkvQXBwZW5kaXggQg%3D%3D

Appendix C – Written Testimony

All written testimony can be found at:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1RYL0h1cnJpY2FuZSBIYXJ2ZXkvQXBwZW5kaXggQw%3D%3D

Testimony submitted by:

Sapna Aiyer, Attorney, Lone Star Legal Aid

Nick Wertsch, Houston Staff Attorney, Workers Defense Project

Pablo Pinto, Director, Center for Public Policy, University of Houston

Karen Paup, Co-Director, Texas Housers, Texas Low Income Housing Information Service

Stephanie Duke, Attorney, Disabilities Rights Texas

Tom McCasland, Director, City of Houston Housing and Community Development Department

Texas General Land Office

Appendix D – List of Individuals and Organizations Invited, but Declined to Participate

South East Texas Regional Planning Commission

FEMA Regional Office

FEMA Office of Equal Rights – Office of Response and Recovery

Houston District FEMA Coordinator

Texas Division of Emergency Management

Texas Department of Insurance

Texas Windstorm Insurance Association

Greater Houston Community Foundation

State Senator Juan Hinojosa

Harris County Housing Authority

HUD

Project Recovery

American Red Cross

Mayor, City of Houston

Baker Ripley

United Way

Appendix E – Questions for FEMA

- **General FEMA operations and functioning**
 - How many requests for FEMA assistance were received from Hurricane Harvey victims?
 - Does FEMA have demographic information regarding impacted persons?
 - Does FEMA have demographic information regarding applicants?
 - How many of these requests were granted?
 - During what time frame were the requests granted?
 - Does FEMA have demographic information regarding assistance requests that were granted?
 - Is FEMA aware of any accessibility issues in requesting assistance following Harvey?
 - Is there information about how allocated funding was broken out for individuals and communities? (Please also provide any relevant demographic information.)
 - Can FEMA provide an overall timeline of resources provided (i.e., how much funding was provided and when, over the course of the response to the storm)?
 - If possible, we are also interested in learning how these numbers compare to other recent hurricane responses.
- **Office of Disability, Integration, and Coordination vs External Civil Rights Division vs Office of Response and Recovery**
 - What outreach and resource sharing activities are done prior to, during, and after a disaster by each office for survivors who experience discrimination?
 - What differences and/or similarities of these different offices result in limitations in ensuring requirements under Sections 308 and 309 of the Stafford Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, Title IX of the Education Amendments Act of 1972, and the Age Discrimination Act of 1975?
 - The FEMA 2018-2022 Strategic Plan has the word “disability” mentioned twice, both in a photo caption. Other terms such as elderly, rights, people of color, and disparities are not mentioned. Was addressing disparities of highest risk populations during a disaster not proposed to be in the Strategic Plan?
 - What agency milestones have been reached in improving preparedness and response to high-risk populations and cases of discrimination?
 - Are there avenues in place to communicate with other divisions within FEMA the unique needs of survivors who are at risk of experiencing disparities including elderly, persons with a disability, people of color, and immigrants?
 - What is that process and is there accountability for those factors to ensure it is done effectively?
 - Are there avenues in place for survivors to communicate misinterpretations or misdirection of policies that ultimately have a detrimental impact on survivors who are at risk of experiencing disparities including elderly, persons with a disability, people of color, and immigrants to other divisions within FEMA? (i.e. Program addressing lack of security deposits because it discriminates against higher income population but really prevents families from moving in adequate housing)
- **FEMA Organization**

- What safeguards are in place to ensure that FEMA priorities are validated under the Department of Homeland Security?
- What safeguards are in place to ensure communication, efforts, programs, and disaster response of FEMA is effective, ethical, and free of disparities?
- **FEMA Preparedness**
 - What specific training is provided to FEMA inspectors regarding:
 - Cultural Competence
 - Unique needs of immigrants
 - Unique needs of elderly
 - Unique needs of persons with a disability
 - What factors are put in place to mitigate language barriers and barriers to accessing FEMA resources during and after a disaster? It was stated during the panel that there FEMA distributes materials in different languages but there are over 140 different languages in the Houston Area alone. How accessible are these materials following a disaster?
- **Claim Requirements**
 - Is there a clear, easy to understand explanation, graphic, etc of the complaint process that a survivor would be able to navigate without any assistance? If so, may we see it?
 - What factors does the Title Clearing Process consider, if any, following a disaster that could impact an applicant's ability to file a complete or adequate application?
 - Are there alternative options for low-income applicants, applicants that do not have the capacity to generate and provide required documents, or applicants of inheritance?
 - FEMA does not use a social vulnerability index. We would like to understand the justification of not using such type of index.
 - Would a form allowing an applicant to verify ownership of home, under penalty of perjury if false, be adequate for applicants of all populations to verify ownership?
 - If FEMA does not apply state laws/regulations regarding property ownership (i.e. Texas homeowners who inherit the property are listed as homeowners), what prevents them from doing so?
- **Claim assistance**
 - Attorneys testified they are currently still waiting on client FEMA files requested following Hurricane Harvey. Is there an explanation?
 - Are there response guidelines for persons requesting claim assistance or documentation? (i.e., deadlines, resources for elevating request, etc.)
- **Data**
 - Is there any consistent data analysis conducted to identify and correct any potential disparities of FEMA programs and services?
 - Does either office provide any lessons learned following a disaster or on a timely schedule (quarterly, annually, etc.)
 - Is sharing data publicly a privacy issue or concern?
 - Could data be shared similar to other agencies? (i.e., DoD Annual Report on Sexual Assault-provides extensive data without identifying victims)
 - What data gathering and analysis is conducted to verify higher risk populations

are receiving the help they need?

- **FEMA and Other Agency Collaboration**
 - What risks are involved with FEMA not being a part of the approval process of the Disaster Housing Assistance Program?
- **Fraud**
 - Is the prevalence of fraud high in areas of populations primarily made of low-income and/or people of color?
 - If not, what efforts can be redirected from fraud concerns to ensuring program effectiveness and providing adequate assistance to higher risk populations during and after a natural disaster?
 - If the prevalence is high, what efforts have been done to analyze the causes or implications of fraud from these communities?