



Testimony of  
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Before the U.S. Commission on Civil Rights  
on the  
Federal Emergency Management Agency's  
Role in Disaster Preparedness and Rresponse to  
Hurricane María in Puerto Rico  
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Chair Norma V. Cantú, and members of the U.S. Commission on Civil Rights, on behalf of LatinoJustice PRLDEF I thank you for the opportunity to present testimony on the Federal Emergency Management Agency's role in disaster preparedness and response to Hurricane María in Puerto Rico.

I am the President & General Counsel at LatinoJustice PRLDEF a national civil rights public interest law office that represents Latinas and Latinos throughout the country and works to increase their entry into the legal profession. Our legal defense fund is anchored in the experiences of Puerto Rico's diaspora having been founded in New York City in 1972 to address the civil and constitutional rights of the Puerto Rican community – a mainstay of our work ever since.

We applaud the Commission's decision to hold a hearing on this topic in Puerto Rico later this year. It is critically important to hear directly from island residents and experts to obtain their perspective on FEMA's response to their direct needs. Our testimony today includes a number of data points and citations that provide context for the role LatinoJustice PRLDEF played in assisting the recovery efforts of Puerto Rico. A clearer picture of the challenges facing the island can only be made with direct testimony from Puerto Rico and we would defer to them on those matters.

Simultaneously, to fully address the topic of today's hearing as it relates to Puerto Rico requires a recognition of Hurricane María's effect on the migration of Puerto Ricans into the states where their rights as evacuees requires compliance and assistance. LatinoJustice PRLDEF's ("LJP") response to the devastating effects of Hurricane María used multiple strategies to provide legal support and advocacy and complement the efforts to secure relief and begin to restore their lives on the island:

1. We supported Puerto Rico-centered, legal assistance efforts in Puerto Rico led by Puerto Rican law professors and attorneys with the incubation of Ayuda Legal Huracán María, now known as Ayuda Legal Puerto Rico, an independent nonprofit on the island.<sup>1</sup> ALHM provided critical assistance to Puerto Ricans who sought to file claims for FEMA assistance (housing, resettlement, relocation, and unemployment assistance) among other matters. Among the project's many

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<sup>1</sup> See [ayudalegalpuertorico.org](http://ayudalegalpuertorico.org)



successes was the development of a sworn affidavit which together with other documentation was accepted by FEMA in lieu of a title or deed documentation the absence of which was a feature of home ownership in the island;

2. We provided legal support and referrals to Puerto Rican evacuees in Florida in need of housing, public education enrollment assistance and civil rights protections;
3. We litigated claims against the Secretary of State of Florida under the Voting Rights Act, Section 4(e) on behalf of Puerto Rican evacuees to assert their rights to receive voting materials and assistance in Spanish<sup>2</sup>
4. We litigated claims against FEMA around its decision to terminate the Temporary Shelter Assistance Program effectively evicting PR evacuees from temporary housing in the U.S.; and
5. Finally, in coalition with other Latino organizations, such as the National Hispanic Leadership Agenda, we advocated for the release of billions of dollars appropriated by Congress but held up by the Trump Administration.

The efforts by LJP were significant but only one part of an enormous effort by Puerto Ricans to restore the island and its resources. Hurricane María was a Category 5 hurricane which reached Puerto Rico on September 20, 2017. The challenge it presented to the recovery efforts was monumental. One estimate from Puerto Rico notes that \$139 billion are needed to recover from Hurricane María.<sup>3</sup> The aftermath of Hurricane María resulted in an electrical power blackout that lasted a year; the longest in any state or territory of the U.S.<sup>4</sup> Additionally, over 175,000 people fled PR within one-year of Hurricane María.<sup>5</sup>

With our direct experiences in working with impacted Puerto Rican evacuees in Florida, Georgia, Massachusetts and New York, LJP respectfully addresses three of the issues identified by the Commission for this hearing, as follows.

**1. Did FEMA’s response to Hurricanes María and Harvey comply with the Robert T. Stafford Disaster Relief and Emergency Act, along with other federal civil rights law and policies?**

The Stafford Disaster Relief Act provides statutory authority for the federal government’s response to natural disasters and FEMA is the agency charged with implementing disaster relief

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<sup>2</sup> *Madera v. Lee*, Case No., 1:18-CV-152-MW/GRJ (N.D. Fla. May. 10, 2019)

<sup>3</sup> Adrian Florido, *Puerto Rico Estimates It Will Cost \$139 Billion To Fully Recover From Hurricane Maria*, NPR (Aug. 9, 2018), <https://www.npr.org/2018/08/09/637230089/puerto-rico-estimates-it-will-cost-139-billion-to-fully-recover-from-hurricane-m>.

<sup>4</sup> Alexia Fernández Campbell, *It Took 11 Months to Restore Power to Puerto Rico after Hurricane Maria. A Similar Crisis Could Happen Again*, VOX MEDIA (Aug. 15, 2018, 12:40 PM), <https://www.vox.com/identities/2018/8/15/17692414/puerto-rico-power-electricity-restored-hurricane-maria>

<sup>5</sup> *Upwards of 175,000 People Have Fled Puerto Rico in the Year Since Hurricane Maria*, CENTER FOR PUERTO RICAN STUDIES (Sep. 27, 2018), <https://centropr.hunter.cuny.edu/events-news/news/upwards-175000-people-have-fled-puerto-rico-year-hurricane-maria>.

under the Act. The Stafford Act covers Puerto Rico and the Virgin Islands with the same force that it covers states.<sup>6</sup> Congressional intent to alleviate the devastating effects of natural disasters is clear in this law: “*It is the intent of the Congress, by this chapter, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters.*”<sup>7</sup> Relevant to this Commission’s inquiry, the Stafford Act clearly prohibits discrimination in the provision of disaster assistance to jurisdictions like Puerto Rico. It mandates a regulatory structure that “shall include provisions for insuring 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.*”<sup>8</sup> Indeed, while the Stafford Act immunizes the actions of the federal government from suit,<sup>9</sup> courts have upheld judicial review when suits are brought to enforce the Act’s nondiscrimination mandate.<sup>10</sup>

Under Section 5148 of the Stafford Act, cited above, Puerto Ricans are protected against the discriminatory provision of relief services on multiple grounds: race, color, nationality, English proficiency, and economic status. As noted below, the direct commentary from the President, along with the preparedness, planning and execution of disaster relief by FEMA for Puerto Rico, as compared to other recent natural disasters in the states, evidences that Puerto Rico and Puerto Rican evacuees were treated differently – and to their detriment.

### **The President’s Messaging About Puerto Rico in the Aftermath of Hurricane María**

The Commission has embarked upon an inquiry about potential civil rights violations during the administration of one of the most polarizing presidencies in modern history, one replete with multiple, quotable examples of the President’s animus towards racial, ethnic, and religious minorities. Without question, this includes the President’s comments and opinions about Puerto Rico and Puerto Ricans.

The charge before this Commission requires a demanding exploration of civil rights protections before, during and after the natural disasters cited; compliance with the Stafford Disaster Relief and Emergency Act which has its own anti-discrimination mandates along with other civil rights guarantees; and the existence of disparities and inequities related to access to disaster aid. We submit that such an exacting inquiry cannot be complete without accounting for the President’s own words and messaging to both his administration, to Congress, and to the American public.

Mr. Trump’s messaging concerning Puerto Rico is damning, disdainful and disrespectful. Read in context with his actions and that of his administration the statements as reported by news outlets or documented in his Twitter feed are occasionally interspersed with corollary statements of how “good” or “GREAT” Puerto Ricans are but for their leaders. Or how much Trump

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<sup>6</sup> 42 U.S.C. § 5122.

<sup>7</sup> 42 U.S.C. § 5121 (emphasis added).

<sup>8</sup> 42 U.S.C. § 5151(a) (emphasis added). The pertinent section of the regulations is found at 44 C.F.R. 206.11(b).

<sup>9</sup> 42 U.S.C. § 5148.

<sup>10</sup> See, McWaters v FEMA, 408 F.Supp.2d 221 (E.D. La. 2005).

“loves” Puerto Ricans. Or how the President was the best thing to ever happen to Puerto Rico. These sporadic bouquets, as noted by Jennifer Saul, are neither dog whistles nor a direct, racist call to arms but instead fig leaves barely covering overt animus and letting (most) Americans avoid acknowledging what they truly hear.<sup>11</sup>

The messaging includes, at a minimum, the following examples:

- Within days of Puerto Rico trying to grasp the magnitude of Hurricane María’s devastation Trump accuses San Juan Mayor Carmen Yulin Cruz of poor leadership and tweets that Puerto Ricans “want everything done for them when it should be a community effort. 10,000 federal workers now on the Island doing a fantastic job.”<sup>12</sup>
- Trump’s visit to Puerto Rico after Hurricane María in October 2017 revealed his disdain for the island. Comparing Hurricane María on the island to Hurricane Katrina in New Orleans, Trump said the latter was a “real catastrophe” and then lamented that federal dollars would have to be used to help Puerto Ricans: “I hate to tell you, Puerto Rico, but you’ve thrown our budget a little out of whack because we’ve spent a lot of money on Puerto Rico”<sup>13</sup> adding “that’s fine, we saved a lot of lives.” Trump followed his comments to the press by telling Puerto Ricans to “have fun” before tossing paper towels to the crowd.<sup>14</sup>
- In October 2017 Trump was reported as mocking the name Puerto Rico in a fake Spanish accent drawing laughs from the crowd— and captured on video doing so.<sup>15</sup>
- A Department of Homeland Security official told news outlets that behind the scenes, Trump expressed “deep animus towards the Puerto Rican people” and that Trump asked whether we could swap Puerto Rico for Greenland because Puerto Rico was “dirty and the people were poor.”<sup>16</sup>
- Trump has minimized to the point of ridicule any evidenced-based analysis of the death toll of Hurricane María in Puerto Rico. After a study by George Washington University pegged the official death toll at 2,945 people he tweeted: “When Trump visited the

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<sup>11</sup> Jennifer Saul, *Donald Trump, Racial Figleaves, and the Breadth of Bigotry* HUFFINGTON POST, (Jan. 20, 2017), [https://www.huffpost.com/entry/donald-trump-racial-figleaves\\_b\\_9033224](https://www.huffpost.com/entry/donald-trump-racial-figleaves_b_9033224).

<sup>12</sup> *Trump Attacks Puerto Rico Mayor: ‘They Want Everything Done for Them*, THE GUARDIAN (Sept. 30, 2017), <https://www.theguardian.com/world/2017/sep/30/donald-trump-attacks-puerto-rico-mayor-carmen-yulin-cruz>.

<sup>13</sup> Will Peischel, *Hurricane Maria Slammed into Puerto Rico 3 Years Ago. Finally, Trump is Providing Some Additional Aid*, MOTHER JONES, (Sep. 18, 2020), <https://www.motherjones.com/environment/2020/09/hurricane-maria-slammed-into-puerto-rico-3-years-ago-finally-trump-is-providing-some-additional-aid/>.

<sup>14</sup> Jeff Darcy, *Trump Insults Puerto Rico: Darcy Cartoon*, CLEVELAND (Oct. 4, 2017), <https://www.cleveland.com/darcy/2017/10/trump-insults-puerto-rico-darc.html>.

<sup>15</sup> Matthew Rozsa, *Donald Trump Celebrates Hispanic Heritage Month by Mocking Puerto Rico in Spanish*, SALON, (Oct. 6, 2017), <https://www.salon.com/2017/10/06/donald-trump-celebrates-hispanic-heritage-month-by-mocking-puerto-rico-in-spanish/>.

<sup>16</sup> Ingrid Cotto and Steven Lemongello *Biden, Hispanic Groups Condemn Trump After Ex-Official Says He Wanted to Sell Puerto Rico*, ORLANDO SENTINEL, (Aug. 20, 2020), <https://www.orlandosentinel.com/politics/2020-election/os-es-trump-puerto-rico-hurricane-maria-elections-fl-reax-20200820-ny27q3iugrew5esovvt7iobgaq-story.html>.

island territory last October, OFFICIALS told him in a briefing 16 PEOPLE had died from Maria.’ The Washington Post. This was long AFTER the hurricane took place. Over many months it went to 64 PEOPLE. Then, like magic, ‘3,000 PEOPLE KILLED’ They hired ... GWU Research to tell them how many people had died in Puerto Rico (how would they not know this?). This method was never done with previous hurricanes because other jurisdictions know how many people are killed. FIFTY TIMES LAST ORIGINAL NUMBER – NO WAY!”<sup>17</sup>

- Trump told his staff that he did not want a single dollar to go to Puerto Rico because he thought the island would misuse the money. Instead, he wanted more money to go to Texas and Florida for their relief efforts.<sup>18</sup>
- Trump said Puerto Rico has received too much disaster aid “way out of proportion to what Texas and Florida and others have gotten.”<sup>19</sup>
- Trump’s tweets reveal a constant barrage of complaints about having to provide disaster aid to Puerto Rico: its leaders “only take from USA;” “Puerto Rico got far more money than Texas & Florida combined, yet their government can’t do anything right;” “The best thing that ever happened to Puerto Rico is President Donald J. Trump ... Cannot continue to hurt our Farmers and States with these massive payments, and so little appreciation.”<sup>20</sup> And “91 Billion Dollars to Puerto Rico, and now the Dems want to give them more, taking dollars away from our Farmers and so many others. Disgraceful!”<sup>21</sup>
- News outlets reported that Trump directly stopped a congressional deal between Republicans and Democrats to provide \$12 billion dollars in Medicaid funding over four years by slashing it to \$5.7 billion over two years in line with his publicly stated view that politicians on the island are “either incompetent or corrupt.”<sup>22</sup>

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<sup>17</sup> Eliza Barclay, *What We Know About the Death Toll in Puerto Rico*, VOX MEDIA, (Sep. 15, 2018), <https://www.vox.com/2018/9/13/17855414/trump-hurricane-maria-puerto-rico-death-toll>. A day later Trump repeated his attack on the report commissioned in Puerto Rico: “We did a great job, and then you went from 64 to 3,000. How did that happen? And they couldn’t explain it. If you read that report, it’s not explainable.” Alexander Fernández Campbell, “Trump’s Latest Rant About Puerto Rico’s Death Toll Makes no Sense,” VOX MEDIA, (Sep. 24, 2018), <https://www.vox.com/2018/9/24/17896022/trump-puerto-rico-hurricane-maria-death-toll>.

<sup>18</sup> Tracey Jan, Arelis R. Hernández, Josh Dawsey, and Damian Paletta, *After Butting Heads with Trump Administration, Top HUD Official Departs Agency*, WASHINGTON POST, (Jan. 16, 2019), [https://www.washingtonpost.com/business/economy/top-hud-officials-departure-follows-disagreements-over-housing-policy-and-puerto-rico-disaster-funds/2019/01/16/e6ba5be4-1839-11e9-9ebf-c5fed1b7a081\\_story.html](https://www.washingtonpost.com/business/economy/top-hud-officials-departure-follows-disagreements-over-housing-policy-and-puerto-rico-disaster-funds/2019/01/16/e6ba5be4-1839-11e9-9ebf-c5fed1b7a081_story.html).

<sup>19</sup> Nicole Acevedo, *Trump Administration Doubles Down on Opposition to Puerto Rico Funding, Drawing Criticism*, NBC NEWS, (Mar. 27, 2019), <https://www.nbcnews.com/news/latino/trump-administration-doubles-down-opposition-puerto-rico-funding-drawing-criticism-n988181>.

<sup>20</sup> Eric Lutz, *Trump is Still Whining About Having to Help Puerto Rico*, VANITY FAIR, (Apr. 2, 2019), .

<sup>21</sup> Aaron Rugar, *Trump’s Latest Outburst Against Puerto Rico, Explained*, VOX MEDIA, (Apr. 2, 2019), .

<sup>22</sup> Rachana Pradhan, *Trump Slashed Puerto Rico’s Medicaid Money as Part of Budget Deal*, POLITICO, (Dec. 17, 2019),

The President’s messaging regarding Puerto Rico as noted above establishes a more than plausible record evidencing an animus toward the island and its residents. When coupled by his acts (for example, slashing Medicaid outlays or encouraging delays and rejections of congressional appropriations) it gives rise to potential violations of the Stafford Act’s nondiscrimination provisions along with other civil rights protections. Trump’s messaging against Mexicans in particular, and Latinos in general, has already garnered the attention of the U.S. Supreme Court in *Department of Homeland Security v. Regents of the University of California* in June of 2020.<sup>23</sup> The Court eventually rejected the argument that the Trump Administration’s decision to rescind the Deferred Action for Childhood Arrivals (“DACA”) program violated the equal protection guarantee of the Fifth amendment.<sup>24</sup> while holding that the rescission of DACA was illegal on other grounds. Trump’s pre- and post-election statements regarding DACA recipients and Mexicans were used by the plaintiffs to support an equal protection violation. These arguments were also rejected by the Court finding that Trump’s statements were both “remote in time and made in unrelated contexts.”<sup>25</sup> We submit that Trump’s messaging about Puerto Rico was neither remote in time to the decisions made to withhold the disaster relief appropriated by Congress nor unrelated to the decisions to delay and bury the disaster relief desperately needed by Puerto Rico. Indeed, in every instance that the President decried Puerto Rico’s need of disaster funding already issued by Congress, delay ensued. The messaging was contemporaneous with the inaction. In addition, it has since been reported that the Office of Management and Budget blocked an independent investigation about the delays at the Department of Housing and Urban Development for issuing much needed disaster housing funds to Puerto Rico to the tune of \$20 billion dollars.<sup>26</sup>

In the absence of a full record that focuses on the decisions made by the White House and the relevant agencies, it appears that the President’s messaging accomplished its desired aims – delay of hurricane disaster funding for Puerto Rico already approved by Congress – in disparate and inequitable fashion when compared to relief from the disasters in Texas and other states.

## **2. Are there any relevant disparities and inequities associated with access to relief aid**

The Government Accountability Office has found that FEMA’s response to Hurricane María in Puerto Rico alone, represents “the largest and longest single response in the agency’s history.”<sup>27</sup> Nonetheless, given the complexities inherent in the island’s topography, infrastructure and geographic proximity to natural disasters the efforts did not fully address the need, nor did they account for what the federal government documented were the lessons learned after Hurricane Katrina in New Orleans.

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<sup>23</sup> *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020).

<sup>24</sup> *Id.* at 1916.

<sup>25</sup> *Id.*

<sup>26</sup> Nicole Acevedo, *New Probe Confirms Trump Officials Blocked Puerto Rico from Receiving Hurricane Aid*, NBC NEWS (Apr. 22, 2021), .

<sup>27</sup> 2017 Hurricanes and Wildfires, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE 1 (Sep. 2018), <https://www.gao.gov/assets/gao-18-472.pdf>.

Among the duties FEMA has pursuant to the Stafford Act is to plan and prepare for natural disasters. The reports cited below by the Government Accounting Office and by FEMA itself document supply shortages as well as staff shortages of fully trained persons prepared to address the unique challenges of providing shelter and housing in Puerto Rico in response to hurricanes. In fact, the uniqueness of Puerto Rico never seemed to factor into FEMA’s planning. The island’s insularity requires particular attention to transport matters. Its terrain across multiple mountain ranges with tropical, desert, and urban environments also would have required specialized attention. Its well documented fiscal crisis would warrant waivers or departures from disaster reimbursement programs in favor of direct grants for construction and remediation. And its high poverty rate coupled with its unique local land use laws cried out for specialized treatment in response to a natural disaster. None to these factors appear to have been accounted for in FEMA’s preparedness, as cited below.

For example, FEMA’s After-Action report of 2018 noted in its Key Finding #2 that its plans guided response operations but enhancements to the planning process and format were needed to improve usability during operations.<sup>28</sup> Specifically, this finding contrasted FEMA’s projections pre-Hurricane María with what it learned post and the comparison is telling:

Planning assumptions	2017 Impacts in PR
Population Impact Planned:	Population Impact Actuality
53%	95%
Cellular Service Impact Planned	Cellular Service Actuality
73%	88%
Power outages Planned	Power outages Actuality
73%	100%
Hospitals Impacted Planned	Hospitals Impacted Actuality
56%	92%
Area of island requiring search and rescue Planned	Area of island requiring search and rescue Actuality
75%	99%

The After-Action report also noted in its Key Finding #3 that FEMA could have better leveraged open-source information and preparedness data, such as capability assessments and exercise findings, for Puerto Rico, specifically that the agency could have better anticipated the severity Hurricanes Irma and Maria would cause long-term, significant damage to the infrastructures.<sup>29</sup> In its Key Finding #4 FEMA noted it entered the hurricane season with staff shortages because its workforce fell short of its targets. Comparing its peak deployment of personnel in Puerto Rico, Texas and Florida the numbers show that deployment in Puerto Rico (1,221) was less than Texas (3,145) and Florida (1,950).<sup>30</sup> These staff shortages required augmentation with contract hires and local hires. Once again, the numbers show that overall deployment was far lower in Puerto Rico as per Key Finding #7: Puerto Rico (2,997), Texas

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<sup>28</sup> FEDERAL EMERGENCY MANAGEMENT AGENCY: 2017 HURRICANE SEASON FEMA AFTER-ACTION REPORT 8 (July 12, 2018), <https://www.fema.gov/media-library-data/1531743865541-d16794d43d3082544435e1471da07880/2017FEMAHurricaneAAR.pdf>.

<sup>29</sup> *Id.* at 11.

<sup>30</sup> *Id.* at 16.

(5,964), Florida (4,086). Finally, Puerto Rico's infrastructure challenges added to the issues faced by FEMA particularly logistical coordination of delivery of commodities.<sup>31</sup> The fiscal crisis faced by the island before Hurricane María could very well have contributed to these matters but were not accounted for in advance.

Comparisons between the FEMA and federal government response to the hurricanes in Puerto Rico with selected states address bigger disparities in disaster aid. A report from BMJ Global Health found stark disparities between the disbursement of direct disaster aid to individuals and families: "Within the first 9 days after the hurricanes hit, both Harvey and Irma survivors had already each received nearly US\$100 million in FEMA dollars awarded to individuals and families, whereas Hurricane María survivors had only received slightly over US\$6 million in recovery aid. Within the first 2 months post-landfall, Harvey and Irma survivors each received nearly US\$1 billion ([figure 1](#), Harvey US\$1.28 billion and Irma US\$899 million). Maria funds did not hit 1 billion until 4 months after landfall."<sup>32</sup> In similar fashion a Government Accountability Office report<sup>33</sup> found that staffing shortages and lack of trained personnel slowed the government's response to Hurricane María in Puerto Rico<sup>34</sup> even as Hurricane María was the largest FEMA response to a disaster in its history. FEMA's own report documented that its unpreparedness for Hurricane María with little to no supplies in its warehouse on the island.<sup>35</sup>

In addition, the failure to fully account for Puerto Rico's fiscal crisis resulted in significant disaster aid not deployed to the island. For example, because Public Assistance is a reimbursement program, local agencies must provide the initial funding for the work and seek reimbursements afterwards. As such, of the \$23.8 billion obligated, Puerto Rico has only spent \$158 million for long-term rebuilding projects, such as rebuilding schools, the power grid, water systems, and other damaged infrastructure.<sup>36</sup> Requiring municipalities to provide funds up front in the midst of the biggest fiscal crisis in any state or territory of the U.S. were clear challenges that needed to be addressed in any planning for federal aid.

Much more can be said about the relevant disparities and inequities that faced Puerto Rico as it tried to access the disaster aid it needed. LJP will respectfully defer to our colleagues on the island to address these issues fully in subsequent Commission hearings. Instead, we will briefly focus on the issues of housing – replacement, restoration, and provision of short-term shelter as an area that overlaps the multi-faceted efforts LJP added to the recovery and include the protection of the rights of Puerto Ricans who migrated to the States.

The restoration of housing and shelter on the island is one of the significant areas that evidence disparities in FEMA's approach. Hurricane María had a devastating impact on the

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<sup>31</sup> *Id.* at 29.

<sup>32</sup> Charley E Willison, Phillip M Singer, Melissa S Creary, et al. *Quantifying Inequities in US Federal Response to Hurricane Disaster in Texas and Florida Compared with Puerto Rico*, BMJ GLOBAL HEALTH, (2019), <https://gh.bmj.com/content/4/1/e001191>.

<sup>33</sup> 2017 Hurricanes and Wildfires, *supra* Note 26.

<sup>34</sup> *Id.* at 1. See also *Federal Report Criticizes FEMA's response to Hurricane Maria in Puerto Rico*, CBS NEWS (Sep. 4, 2018), [ne-maria-in-puerto-rico/](#)

<sup>35</sup> Frances Robles, *FEMA Was Sorely Unprepared for Puerto Rico Hurricane, Report Says*, NEW YORK TIMES, (July 12, 2018), <https://www.nytimes.com/2018/07/12/us/fema-puerto-rico-maria.html>.

<sup>36</sup> Puerto Rico Recovery, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE Highlights (May 2021).



island's housing stock. Estimates of housing units impacted by Hurricane María range from 252,035 (16% of all units) with 2,985 destroyed, up to 783,847 (50% of all units) with 87,094 destroyed, from both FEMA and the government of Puerto Rico, respectively.<sup>37</sup> This data describes just part of the magnitude of the challenge to restore homes for Puerto Ricans. The other challenge is the unique nature of the islands legal structure in property law coupled with a significant portion of homeowners who lack deeds or title to their homes. Puerto Rico is civil law jurisdiction not a common law jurisdiction like virtually all other places in the U.S. and this affects estate planning, land use law, and real property transactions. Forty-nine percent of people in Puerto Rico do not have title to their homes as per a survey by University of Puerto Rico.<sup>38</sup> In February 2019 news reports noted that of the 1.1 million claims for assistance to FEMA, less than half were approved<sup>39</sup> and lack of title was a significant factor. Specifically, FEMA either denied requests for repair assistance outright or demanded onerous and expensive alternative documentation.<sup>40</sup> Additional problems with FEMA's oversight of the process were identified as well including lack of adequate training of housing inspectors, inability to assess faults in concrete structures, and an overdependence on non-Spanish speaking inspectors.<sup>41</sup> Other potential civil rights violations were revealed in the same reportage including denying repair assistance when FEMA staff would not accept the gender identity of transsexual people who obtained court orders for name changes that were not reflected in federal databases.<sup>42</sup> As noted above, Ayuda Legal Huracán María was able to intercede for claimants without access to title documents to allow them to use affidavits and alternative documentation instead.

LJP and other public interest law organizations eventually represented Puerto Ricans in Massachusetts, New York, and Florida in a court challenge to FEMA's termination of its Temporary Shelter Assistance ("TSA") program for Puerto Rican evacuees. At the time the suit was filed in 2018 just over 1,000 evacuees were living in participating TSA hotels. The complaint<sup>43</sup> in *Asencio v. FEMA* outlines differences between FEMA's response to Hurricane María in PR and Hurricanes Katrina, Harvey and Irma elsewhere with multiple citations which mirror the inequities and disparities noted above.<sup>44</sup> But the core of the claims against FEMA

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<sup>37</sup> *Reimagina Puerto Rico*, OFFICE RESILIENT PUERTO RICO ADVISORY COMMISSION: HOUSING SECTOR REPORT 27 (2018).

<sup>38</sup> Carolina Bolado and Natalie Rodriguez, *Now is the Real Crisis: Puerto Ricans Struggle for Disaster Aid*, LAW 360-IN DEPTH, (Feb. 10, 2019), [https://www.law360.com/access-to-justice/articles/1123340/-now-is-the-real-crisis-puerto-ricans-struggle-for-disaster-aid?nl\\_pk=61ca88b9-b73d-476d-8ddb-9b3b01945641&utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=access-to-justice](https://www.law360.com/access-to-justice/articles/1123340/-now-is-the-real-crisis-puerto-ricans-struggle-for-disaster-aid?nl_pk=61ca88b9-b73d-476d-8ddb-9b3b01945641&utm_source=newsletter&utm_medium=email&utm_campaign=access-to-justice).

<sup>39</sup> *Id.*

<sup>40</sup> 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/>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Complaint, *Asencio vs Federal Emergency Management Agency*, No. 4:18-cv-40111-TSH, (D. Mass. July 12, 2018).

<https://www.latinjustice.org/sites/default/files/First%20Amended%20Class%20Action%20Complaint%20Seeking%20Injunctive%20and%20Declaratory%20Relief%204.18%20cv%2040111%20TSH.pdf>

<sup>44</sup> *Id.* See ¶59 for differences in FEMA's preparedness between hurricanes Maria, Harvey and Irma; paragraph 60 for information about the deployment of helicopters for Houston in 6 days and a wait three times as long for

addressed the disparities in providing shelter and housing assistance. After Hurricanes Katrina and Rita, transitional housing assistance which included Temporary Shelter Assistance was provided for up to 26 months; for Hurricane María it was only 9 months.<sup>45</sup> The complaint continued painting the clear disparities between FEMA's response to Hurricane María and other hurricanes: "Hurricane Harvey destroyed far fewer homes in Texas than Hurricane María did in Puerto Rico. Yet FEMA provided TSA to far fewer Puerto Rican survivors than to their Texan counterparts. According to FEMA: 'Over the last 10 months, the TSA program has provided shelter to more than 60,000 households in Puerto Rico and Texas, making it the longest emergency shelter mission in the history of the program.'

(<https://www.fema.gov/medialibrary/assets/videos/166770>.) Yet FEMA has separately acknowledged that the overwhelming majority, at least 54,637, of these affected households are Texan families, not Puerto Ricans. (FEMA News Release No. TRO-NR-004.)"<sup>46</sup>

The court eventually denied a preliminary injunction to keep the Puerto Rican evacuees in their hotels under the TSA program even as it alluded to the fact that it would be the most humanitarian thing to do.<sup>47</sup> In support the court noted that the Stafford Act grants discretion to FEMA in shaping its response to disasters and that effectively, nothing in the Act is mandatory.<sup>48</sup> It also noted that the Governor of Puerto Rico did not ask for an extension of TSA benefits which implicates local contributions to the total costs of shelter.<sup>49</sup> Finally, it accepted FEMA's main arguments that all disasters are different and require different responses.<sup>50</sup> While the record to support the plaintiffs' claims was not fully developed eventually the case was withdrawn. Nonetheless, the disparities noted in the litigation were not fully developed nor tried.

Two years later in 2020 the issue of major delays in delivering the disaster aid authorized by Congress was the subject of discussion in the U.S. Senate. A number of Senators demanded that the Department of Housing and Urban Development ("HUD") release \$16.5 billion dollars in Community Development Block Grant grants delayed by two years after a statutory deadline. HUD placed conditions on Puerto Rico that it did not place on any of nine states receiving the funds. For each of those states, HUD issued guidelines for receiving the disaster relief. For Puerto Rico, HUD did not. As noted above, news reports point to steps taken by the Office of Management and Budget to block an independent investigation about the delays at the Department of Housing and Urban Development for issuing much needed disaster housing funds.<sup>51</sup>

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helicopters in Puerto Rico; ¶161-62 for disparities between Maria and Irma on the distribution of meals, tarps and water.

<sup>45</sup> *Id.* at ¶ 85.

<sup>46</sup> *Id.* at ¶ 87.

<sup>47</sup> Order Denying Plaintiffs' Motion for Preliminary Injunction, Asencio vs Federal Emergency Management Agency, No. 4:18-cv-40111-TSH, (D. Mass. July 12, 2018). <https://www.clearinghouse.net/chDocs/public/PB-MA-0012-0006.pdf>

<sup>48</sup> *Id.* at 13.

<sup>49</sup> *Id.* at 8.

<sup>50</sup> *Id.* at 19.

<sup>51</sup> Acevedo, *supra* note 25.

### 3. Were any types of civil rights complaints received

We are only aware of the discrimination claims made in the *Asencio v. FEMA* (sub nom *Delgado Santos v. FEMA*) litigation noted above. Those claims were not fully resolved in the litigation and included Equal Protection claims based on race, national origin and type of US citizenship.<sup>52</sup> The same allegations were made regarding violations of the Stafford Act.<sup>53</sup> Finally, news outlets reported denial of housing repair relief to transexual people on the island, as noted above.<sup>54</sup>

### Conclusion

The impact of Hurricane María on Puerto Rico is still seen today. Blue tarps dot the island, the electrical grid is severely compromised, out-migration has not rebalanced in any significant way and disaster relief dollars have not fully reached the island after more than three years.

Puerto Rico is a colony of the United States and its voice is muted as a result. What is clear however, is that the United States through its executive branch has an obligation to comply with the laws of Congress. That has yet to materialize despite the initial steps taken during the current administration.

The U.S. Commission on Civil Rights has embarked upon this inquiry to address the federal government's response to two different disasters in two different places. It would be facile to dismiss the comparisons between two distinct jurisdictions struggling to survive the aftermath of two distinct natural disasters. Texas is not Puerto Rico and Puerto Rico is not Texas. But the Stafford Act, along with its nondiscrimination mandates, does not make such distinctions. We submit that the White House made those distinctions repeatedly. Everything else flows from there.



Juan Cartagena<sup>55</sup>  
President & General Counsel  
LatinoJustice PRLDEF  
25 June 2021

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<sup>52</sup> Complaint, *Asencio vs Federal Emergency Management Agency*, supra note 42, at ¶ 136.

<sup>53</sup> *Id.* at ¶ 140-146.

<sup>54</sup> See Banuchi, supra note 39.

<sup>55</sup> I would like to acknowledge the research support and assistance of Nickole Durbin-Felix, JD, an LL.M. student at the Interamerican University School of Law In Puerto Rico and an intern at LatinoJustice PRLDEF.