

No. 25-2163

**IN THE UNITED STATES COURT OF APPEALS FOR THE
FIRST CIRCUIT**

COMITÉ DIÁLOGO AMBIENTAL, INC., et al.,

Plaintiffs-Appellees,

v.

FEDERAL EMERGENCY MANAGEMENT AGENCY; U.S.
DEPARTMENT OF HOMELAND SECURITY; KAREN S. EVANS, in
her official capacity as Acting Administrator of FEMA; and KRISTI
NOEM, in her official capacity as Secretary of Homeland Security,

Defendants-Appellants.

On Appeal from the United States District Court for the District of
Puerto Rico Case No. 3:24-cv-01145-JAG

**ASSENTED-TO MOTION FOR LEAVE TO FILE AMICUS
CURIAE BRIEF OF SOUTHERN LEGAL COUNSEL, INC.,
LATINOJUSTICE PRLDEF, AND THE AMERICAN CIVIL
LIBERTIES UNION OF PUERTO RICO IN SUPPORT OF
PLAINTIFFS-APPELLEES AND AFFIRMANCE**

Pursuant to Federal Rule of Appellate Procedure 29(b)(2) and First Circuit Local Rules, Southern Legal Counsel, Inc. (“SLC”), LatinoJustice PRLDEF (“LJP”), and the American Civil Liberties Union of Puerto Rico (“ACLU of PR”) (collectively, “Amici Curiae”) respectfully move this Court for leave to file the attached Amicus Curiae Brief in support of Plaintiffs-Appellees and affirmance of the District Court's order. All parties to this appeal have explicitly assented to the filing of this brief. 1st Cir. Loc. R. 27.0(a). In support of this motion, Amici Curiae state as follows:

I. INTEREST OF AMICI CURIAE

1. Amici Curiae comprise a coalition of prominent civil rights, environmental justice, and legal advocacy organizations explicitly dedicated to protecting the constitutional and human rights of marginalized and vulnerable populations in Puerto Rico and across the United States.

2. Southern Legal Counsel, Inc. (SLC), a statewide, Florida-based non-profit law firm providing high-impact legal advocacy to protect the civil rights of vulnerable populations, including underrepresented groups systematically impacted by natural disasters. SLC leads this

amicus effort to ensure federal disaster recovery frameworks remain climate-resilient and structurally equitable.

3. LatinoJustice PRLDEF (LJP), founded in 1972 as the Puerto Rican Legal Defense and Education Fund, LJP is dedicated to protecting the constitutional, legal, and human rights of Puerto Ricans and the broader Latino community. LJP actively responds to environmental crises and structural disparities affecting both the Archipelago and the Diaspora.

4. The ACLU of PR, a national and territorial civil liberties organization devoted to promoting the internationally recognized right to self-determination for residents of Puerto Rico and aggressively challenging discriminatory, unequally applied federal policies within U.S. territories.

II. DESIRABILITY AND RELEVANCE OF THE AMICUS CURIAE BRIEF

5. Under Federal Rule of Appellate Procedure 29(a)(3), an amicus brief is desirable when it brings unique information or perspective that assists the Court in resolving the core legal issues. Here, Amici Curiae provide a vital, data-driven national and regional perspective on the institutional consequences of the Federal Emergency Management

Agency's ("FEMA") disaster response mechanisms that transcend the immediate record developed by the principal parties.

6. Specifically, the attached amicus brief and its accompanying empirical research addendum—developed by expert witness Professor Nadia B. Ahmad—elucidate how FEMA’s programmatic reliance on a threadbare Programmatic Environmental Assessment ("Utilities PEA") entrenches systemic civil rights and structural inequities.

7. Amici Curiae's brief contextualizes the administrative record by highlighting:

- (i) Systemic Funding Disparities: Factual data indicating a structural, national 3.99:1 funding ratio skewed in favor of contractor-directed Public Assistance over Individual and Households Program (IHP) aid—a ratio that deteriorates to 4.26:1 within the South and Southwest;
- (ii) The Territorial and Rural Penalty: Empirical evidence that completely rural jurisdictions face a 38 percent national penalty in household grants , while every U.S. territory sits within the bottom half of the national damage-adjusted household support distribution; and,

(iii) The National Risk Index Void: The legal significance of FEMA executing multi-billion-dollar infrastructure decisions in Puerto Rico while its own primary hazard tracking mechanism, the National Risk Index (NRI), contains zero usable risk or resilience data for any of the territory's 78 municipios.

8. Furthermore, post- *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, this brief provides this Court with an analytical framework to exercise its mandatory independent judgment. Amici demonstrate that FEMA is acting not as a passive lender, but as a primary policymaker holding exclusive "purse strings" over \$12 billion in reconstruction funding, thus executing a "major federal action" that legally triggers a comprehensive Environmental Impact Statement ("EIS") under the National Environmental Policy Act ("NEPA").

III. CONCLUSION

9. Because this brief provides critical sociological, data-driven, and statutory context directly impacting vulnerable frontline populations within the First Circuit and the Diaspora nationwide, Amici Curiae respectfully request that this Court grant leave to file the attached Amicus Curiae Brief.

Dated: May 20, 2026

Respectfully submitted,

/s/ Roberto Cruz Hernández

Roberto Cruz Hernández

USDC-PR No. 217006

Attorney

Southern Legal Counsel, Inc.

1229 NW 12th Ave,

Gainesville, FL 32601

(352) 271-8890

Email:

roberto.cruz@southernlegal.org

Lead Counsel for Amici Curiae

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1, Amici Curiae state that Southern Legal Counsel, Inc., LatinoJustice PRLDEF, and the American Civil Liberties Union of Puerto Rico are nonprofit corporations. They possess no parent companies, subsidiaries, or affiliates, nor do they issue shares to the public. No publicly traded corporation owns 10% or more of stock in any of the moving organizations.

Dated: May 20, 2026

/s/ Roberto Cruz Hernández
Roberto Cruz Hernández
USDC-PR No. 217006

No. 25-2163

**IN THE UNITED STATES COURT OF APPEALS FOR THE
FIRST CIRCUIT**

COMITÉ DIÁLOGO AMBIENTAL, INC., et al.,
Plaintiffs-Appellees,

v.

FEDERAL EMERGENCY MANAGEMENT AGENCY; U.S.
DEPARTMENT OF HOMELAND SECURITY; KAREN S. EVANS, in
her official capacity as Acting Administrator of FEMA; and MARK
WAYNE MULLIN, in his official capacity as Secretary of Homeland
Security,
Defendants-Appellants.

On Appeal from the United States District Court for the District of
Puerto Rico Case No. 3:24-cv-01145-JAG

**AMICUS CURIAE BRIEF OF SOUTHERN LEGAL COUNSEL,
INC., LATINOJUSTICE PRLDEF, AND THE AMERICAN CIVIL
LIBERTIES UNION OF PUERTO RICO IN SUPPORT OF
APPELLEES AND AFFIRMANCE**

/s/ Roberto Cruz Hernández
Roberto Cruz Hernández USDC-
PR No. 217006
Attorney
Southern Legal Counsel, Inc.
1229 NW 12th Ave,
Gainesville, FL 32601
(352) 271-8890
Email:
roberto.cruz@southernlegal.org

/s/ Lourdes Rosado
*Lourdes Rosado
President, General Counsel
LatinoJustice PRLDEF
475 Riverside Drive
New York, NY 10115
(212) 219-3360
Email: lrosado@latinojustice.org

/s/ Fermín L. Arraiza-Navas
Fermín L. Arraiza-Navas
USDC-PR No. 215705
Email: farraiza@aclu.org
(787) 966-3133
Annette Martinez-Orabona
Executive Director
Email: amartinez-orabona@aclu.org
American Civil Liberties Union of
Puerto Rico
Union Plaza, Suite 1105
416 Avenida Ponce de León
San Juan, Puerto Rico 00918
(787) 753-9493

*Pending Pro Hac Vice Admission

Attorneys for Amicus Curiae

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1, amicus curiae, the Southern Legal Counsel, Inc. (“SLC”), LatinoJustice PRLDEF (“LJP”), and the American Civil Liberties Union of Puerto Rico (“ACLU of PR”) state that they are nonprofit corporations that have no parent companies, subsidiaries, or affiliates. Nor does Amicus issue shares to the public, and no publicly traded corporation owns 10% or more of its stock.

TABLE OF CONTENTS

RULE 26.1 CORPORATE DISCLOSURE STATEMENT	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. Environmental Impact Statement Requirement	4
II. FEMA’s Failure to Perform an EIS Ignores the Community Submission of Data and Testimony on health, safety and welfare	8
III. Democratizing Disaster Recovery: The Essential Role of the EIS in Aligning FEMA’s Post-Maria Reconstruction with the Public Interest.	11
A. The Economics of Reconstruction	11
B. Public Interest in Energy Policy and International Law	14
IV. FEMA’s Failure to Prepare an EIS Creates a Dangerous Precedent for Vulnerable Communities Nationwide	18
A. Reversal of the “Build Back Better” Agenda under the OBBB Act	18
B. FEMA is Not a Bank, it is a Policymaker	19
C. Protecting Sovereignty and Self-Determination	21
D. Interconnected Risks for the Diaspora	22
CONCLUSION	24
CERTIFICATE OF COMPLIANCE	25
ADDENDUM	26

TABLE OF AUTHORITIES

Cases

In re Fin. Oversight & Mgmt. Bd., 7 F.4th 31 (1st Cir. 2021) 13

Loper Bright Enterprises v. Raimondo, 144 S. Ct. 2244 (2024)3, 19, 20

Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29 (1983) 9, 11

Municipality of Cabo Rojo v. Powersecure, Inc., 390 F.Supp.3d 327 (2019). 6

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989) 8

Pierluisi v. Fin. Oversight & Mgmt. Bd. for P.R., 37 F.4th 746 (1st Cir. 2022) 13

Seven County Infrastructure Grant v. Eagle Cnty., 145 S. Ct. 423 (2024) 9, 11, 20

Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc., 435 U.S. 519, 551 (1978) 17

United States v. Belmont, 301 U.S. 324 (1937) 15

United States v. Tribble, 470 F.Supp.3d 139 (2020) 6

Zicherman v. Korean Air Lines Co., 516 U.S. 217 (1996) 15

Statutes

H.R. 5376, 117th Cong. (2021) 19

PR Act No. 17-2019..... 13, 14, 22

Pub. L. No. 117-169, 136 Stat. 1818 (2022) 19

Pub. L. No. 119-1, 139 Stat. 1 (2025) 18, 22

U.S. Const. Art. IV § 2 15

42 U.S.C. § 4332(2)(C) 6, 8, 22

Rules

40 C.F.R. § 1502.14 (2024) 11

40 C.F.R. § 1508(m)(1)-(2)..... 22

40 C.F.R. § 1508.1(q)..... 6
 44 C.F.R. § 10.8(d) 5
 Executive Order 14008, 86 F.R. § 7619 10, 11
 Executive Order 14096, 88 F.R § 25251 10, 11
 Fed. R. App. P. 29(a)(4)(E) 1
 Fed. R. App. P 29(b)(2) 1

Other Authorities

A. Díaz Rolón, *Más sólida la ‘ruta del hambre’*, El Vocero (September 29, 2019) 8
 Andrea Zambrana-Rosario et al., *Impact of Infrastructure Disruptions on Puerto Rican Household Capabilities, Health, and Well-Being*, Natural Hazards Center Public Health Disaster Research Report Series, Report 21 (2022) 7, 11
Case Concerning East Timor (Portugal v Australia), ICJ Reports 1995 15
 Catalina M de Onis, *Energy Colonialism Powers the Ongoing Unnatural Disaster in Puerto Rico*, *Frontiers in Communication* (Jan 29, 2018) 16
 Cathy Kunkel & Tom Sanzillo, *FOMB, New Fortress Energy Threaten Puerto Rico Resident Efforts to Install Life-Saving Rooftop Solar*, Inst. for Energy Econ. & Fin. Analysis (Oct. 21, 2024)..... 13
 Colin Grabow and Alfredo Carrillo Obregon, *The Jones Act is Forcing Puerto Rico to Overpay for Energy*, Cato Institute (Jul. 25, 2022) 16
Climate Migration as Climate Resilience: A Case Study of Orlando, Florida, 54 *Env’tl. L. Rep.* 10736, at 10738–40 (2024) 14
 Council on Env’t Quality, *Environmental Justice: Guidance under the National Environmental Policy Act* (December 10, 1997) 12
 Edwin Meléndez & Jennifer Hinojosa, *Estimates of Post-Hurricane Maria Exodus from Puerto Rico*, Centro de Estudios Puertorriqueños, at 1–3 (Oct. 2017)..... 14

F. Fajana and L. Fiol-Matta, *The Scourge of the Insular Cases: Ending Constitutional Apartheid in Puerto Rico*, 92 REV. JUR. UPR 1 (2023) 13

Fed. Emergency Mgmt. Agency, Region II, Programmatic Environmental Assessment: Utility Repair, Replacement, and Realignment, Commonwealth of Puerto Rico, DR-4339-PR (Aug. 2020) 7, 17

Fernando I. Rivera, *When the U.S. Sneezes, Puerto Rico Already Has a Cold*, 17 CONTEXTS 62 (2018) 23

Hans Sanderson et al., *Civilian Exposure to Munitions-Specific Carcinogens and Resulting Cancer Risk for Civilians on Puerto Rican Island of Vieques Following Military Exercise From 1947 to 1998*, Global Security: Health, Science and Policy Vol. 2 No. 1, (August 14, 2017) . 16

Heterogeneity of Childhood Asthma Among Hispanic Children: Puerto Rican Children Bear a Disproportionate Burden, 117 Pediatrics 43 (2006) 16

International Covenant on Civil and Political Rights (ICCPR), (999 U.N.T.S. 171). 15

John Yoon, *Outage Leaves About 350,000 Customers in Puerto Rico Without Power*, N.Y. Times (June 13, 2024) 7, 11

Legal Consequences of the Separation of the Chagos Archipelago From Mauritius in 1965, Advisory Opinion, ICJ Reports 2019 16

Letter from Raúl Grijalva, Member of Cong., et al., to David Skeel, Chair, Fin. Oversight & Mgmt. Bd. for P.R. (May 17, 2024)..... 13

M. Yazdanie, *Resilient Energy System Analysis and Planning Using Optimization Models*, 4 Energy & Climate Change 100097 (Dec. 2023) 14

Maria Gallucci, *Rebuilding Puerto Rico’s Power Grid: The Inside Story*, Inst. Of Electrical & Electronic Engineers Spectrum (Mar. 12, 2018). .. 9

Mariah Espada, *Solar Power is Helping Some Puerto Rico Homes Avoid Hurricane Fiona Blackouts*, TIME, (September 20, 2022) 17

Mark Dorosin, *Making America a Better Place for All: Sustainable Development Recommendations for the Biden Administration*, 51 ENV’T L. REP. 10310 (2021)..... 21

Nada Hassanein, *In Vieques, Puerto Rico, Cancer Rates are High. Advocates Say Navy Bombing May Be to Blame*, USA Today (June 14, 2023) 16

Nadia Ahmad, Uma Outka, Danielle Stokes & Hannah Wiseman, *Synthesizing Energy Transitions*, 39 Ga. St. U. L. Rev. 1087 (2023)..... 21

Launch of PR100 (February 2022), PR100 6-month Progress update (July 2022), PR100 One-Year Progress Summary Report (January 2023), and PR 100 Final Results (February 2024), available at National Renewable Energy Laboratory (NREL) at www.nrel.gov/publications 14

Robert Walton, *Puerto Rico’s Electricity Rates Have Nearly Doubled Since 2020: IEEFA, Utility Dive* (July 18, 2022) 7, 11

Sarah M. Ladislaw, *Environmental Racism, Colonialism, and the Legacy of Hurricane Maria in Puerto Rico*, 34 Geo. Env’t L. Rev. 367 (2022)..... 12

Something Lost, Something Gained: The Tradeoffs of Puerto Rican Hurricane Maria Migrants, 21 Int’l J. Env’tl. Res. & Pub. Health 11919788, at 5–8 (2024) 14

Staff Report, *Puerto Rico Energy Bureau’s Temporary Response to Electric Grid Woes is Problematic at Best, Corrupt at Worst*, Fla. Politics (Feb. 20, 2026) 13

Summary of the panel discussion on the negative impact of the legacies of colonialism on the enjoyment of human rights: Report of the Office of the UN High Commissioner for Human Rights, A/HRC/54/4, 1 June 2023, par. 23. 16

United Nations Office for Disaster Risk Reduction (UNDRR). 2017. *The Sendai Framework Terminology on Disaster Risk Reduction*. "Build back better". Accessed 1 March 2026..... 5, 19

INTEREST OF AMICI CURIAE¹

Amici Curiae are a coalition of civil rights, environmental justice, and legal advocacy organizations dedicated to protecting the rights of marginalized communities in Puerto Rico and the United States. SLC is a statewide Florida non-profit law firm that provides high-impact legal advocacy to protect the civil rights of vulnerable populations. SLC leads this amicus effort to ensure federal disaster recovery standards are climate-resilient and equitable. LJP, formerly the Puerto Rican Legal Defense and Education Fund, founded in 1972, is dedicated to protecting the constitutional and human rights of Puerto Ricans and the broader Latino community. It responds to disasters affecting both the Archipelago and the Diaspora to ensure equitable access to relief. The ACLU of PR are devoted to promoting the internationally recognized right to self-determination for residents of Puerto Rico and challenging discriminatory federal policies in U.S. territories.

¹ Amici moved for leave to file this brief. *See* Fed. R. App. P 29(b)(2). All parties assented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no person other than Amici and their counsel has made a monetary contribution to the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

SUMMARY OF ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), this amicus brief is uniquely necessary because it provides this Honorable Court with a vital, data-driven national and regional perspective on the institutional consequences of the Federal Emergency Management Agency’s (“FEMA”) disaster response mechanisms—a perspective that transcends the immediate administrative record and directly serves the public interest. Specifically, the accompanying empirical research addendum developed by expert witness Professor Nadia B. Ahmad elucidates how FEMA’s programmatic reliance on a threadbare Programmatic Environmental Assessment (“Utilities PEA”) completely shuts out meaningful community participation and entrenches systemic civil rights and structural inequities across vulnerable frontline populations within the First Circuit and the Puerto Rican Diaspora nationwide.

Amici Curiae contextualize the record by highlighting three devastating institutional failures exposed by Professor Ahmad’s testimony. First, factual data reveals deep-seated systemic funding disparities, characterized by a structural, national 3.99:1 funding ratio

heavily skewed in favor of corporate, contractor-directed Public Assistance over direct Individual and Households Program (IHP) aid—a ratio that deteriorates to an even more disparate 4.26:1 within the South and Southwest. Second, this framework enforces a severe territorial and rural penalty, wherein completely rural jurisdictions face a 38 percent national penalty in household grants, while every single U.S. territory sits relegated within the bottom half of the national damage-adjusted household support distribution. Third, this top-down regime operates within a profound National Risk Index void, meaning that FEMA is executing multi-billion-dollar infrastructure choices in Puerto Rico while its own primary hazard-tracking mechanism contains zero usable risk or resilience data for any of the territory's 78 municipalities.

Furthermore, in the wake of *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), this brief provides this Court with the necessary analytical framework to exercise its mandatory independent statutory judgment rather than deferring to an abdication of agency oversight. Amici demonstrate that FEMA is acting not as a passive lender, but as a primary policymaker holding exclusive purse strings over \$12 billion in reconstruction funding. This sweeping exercise of federal control

constitutes a "major federal action" that legally triggers a comprehensive Environmental Impact Statement ("EIS") under the National Environmental Policy Act ("NEPA"). Granting the public a formal procedural framework through a full EIS is an absolute necessity to ensure that federal recovery efforts are shaped by transparent, community-driven data, thereby shifting the focus of disaster relief away from corporate contractor entrenchment and back toward substantive self-determination, public participation, and climate-resilient equity.

ARGUMENT

I. Environmental Impact Statement Requirement

NEPA's requirement for an Environmental Impact Statement (EIS) creates a formal procedural framework for public participation, ensuring that the community has a meaningful opportunity to be heard on FEMA's major Hurricane Maria recovery projects. In this case, NEPA review became a point of contention due to FEMA's need to expedite the restoration of basic services versus the community's interest in a

sustainable and resilient recovery.² Federal agencies frequently request Categorical Exclusions (CEs) or abbreviated Environmental Assessments (EAs) to expedite or streamline environmental reviews.³ Even though speed is essential, the pace must be balanced with the long-term environmental and social impacts of the rebuilding choices. The idea of post-disaster reconstruction is one where a consensus has emerged about the need to ‘build back better’.⁴ However, such an opportunity is lost if the agencies merely rubber-stamp the return to pre-

² Opening Brief for Appellants, *Comité Diálogo Ambiental, Inc. v. FEMA*, No. 25-2163 (1st Cir. Mar. 25, 2026), at 12–15 [Document: 00118422299]; *Comité Diálogo Ambiental, Inc. v. FEMA*, No. 3:24-cv-01145-JAG, slip op. at 14–18 (D.P.R. Oct. 2, 2025).

³ See, e.g., 44 C.F.R. § 10.8(d) (FEMA regulations on emergency actions and exceptions to the standard NEPA process).

⁴ United Nations Office for Disaster Risk Reduction (UNDRR). 2017. *The Sendai Framework Terminology on Disaster Risk Reduction*. "Build back better". Accessed 1 March 2026

disaster status quo which was itself highly vulnerable and/or environmentally unsustainable.⁵

NEPA requires an EIS for any “major federal action” which could “significantly affect the quality of the human environment.”⁶ FEMA is a federal agency and the decision to devote tens of billions of dollars to rebuilding Puerto Rico’s energy system is major federal action.⁷ The court pointed out the comprehensive nature of the applications and the involvement of the federal government, who will have a hand in the state’s energy policy.⁸ The environmental effects of FEMA’s plan are indisputably significant. Puerto Rico’s existing fossil fuel infrastructure is obsolete, unreliable, and susceptible to extreme weather events.⁹

⁵ Slip. op., *supra*, note 2

⁶ 42 U.S.C. § 4332(2)(C)

⁷ 40 C.F.R. § 1508.1(q)

⁸ Slip op. *supra*, note 2, at 8–11

⁹ In *Municipality of Cabo Rojo v. Powersecure, Inc.*, 390 F.Supp.3d 327 (2019); *United States v. Tribble*, 470 F.Supp.3d 139 (2020).

Rebuilding this system again will do significant environmental damage and threaten climate resilience.¹⁰

Notwithstanding the NEPA project review requirements, FEMA opted to use Project-Based Environmental Assessments (PEAs) for the fossil fueled utilities repair, neglecting to evaluate the long-term climate risks, and dismissing the potential of distributed renewable energy systems like solar microgrids to provide climate benefits and improved resilience.¹¹

In the end, under NEPA, FEMA's projected major federal action and governmental interest in expediting the restoration of basic services must consider alternatives proposed by the public. As FEMA proceeds with the EIS, its' disaster relief project is more likely to serve the public

¹⁰ Robert Walton, *Puerto Rico's Electricity Rates Have Nearly Doubled Since 2020: IEEFA, Utility Dive* (July 18, 2022); John Yoon, *Outage Leaves About 350,000 Customers in Puerto Rico Without Power*, N.Y. Times (June 13, 2024); Andrea Zambrana-Rosario et al., *Impact of Infrastructure Disruptions on Puerto Rican Household Capabilities, Health, and Well-Being*, Natural Hazards Center Public Health Disaster Research Report Series, Report 21 (2022)

¹¹ Fed. Emergency Mgmt. Agency, Region II, Programmatic Environmental Assessment: Utility Repair, Replacement, and Realignment, Commonwealth of Puerto Rico, DR-4339-PR (Aug. 2020) at https://recovery.pr.gov/documents/3b%20Utilities_PEA_FINAL_20200710%20-%20508.pdf (hereinafter "Utilities PEA")

interest and ensure a thorough and accurate assessment of environmental impacts.

II. FEMA’s Failure to Perform an EIS Ignores the Community Submission of Data and Testimony on health, safety and welfare

Establishing a formal procedural framework through a full EIS ensures that FEMA’s Hurricane Maria recovery efforts are informed by community-driven data, testimony and legal advocacy, shifting the focus of disaster relief toward the actual public interest.¹²

On the one hand, public interest in health and safety calls for community driven data to ensure sustainable recovery. Here, the community-based data shows that Puerto Rico's main fossil fuel system hits poor and rural areas hard. Many live close to fossil fuel power plants. They deal with higher asthma, cancer, and other issues from the damage. Data points to the southeast region, known as “la ruta del hambre¹³”, as

¹² 42 U.S.C. § 4332(2)(C). *Also see Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)

¹³ Composed by the municipalities of Salinas, Arroyo, Patillas, Maunabo, Guayama and Yabucoa. A. Díaz Rolón, *Expuesta la “ruta del hambre”*, El Vocero (September 20, 2017); A. Díaz Rolón, *Más sólida la ‘ruta del hambre’*, El Vocero (September 29, 2019).

experiencing unsustainable cancer rates significantly higher than the national average.¹⁴

On the second hand, the public's general welfare demands expert testimony to ensure resilient recovery. In this case, testimony from Professor Nadia Ahmad exposes systemic inequities in FEMA's disaster framework. Analyzing 2000–2024 data, it reveals a national 4:1 funding disparity favoring corporate contractors over direct individual household assistance, alongside a 38% grant penalty for rural communities. Crucially, FEMA's National Risk Index entirely excludes risk and resilience data for Puerto Rico's 78 local municipalities. Despite \$26.8 billion in flood losses, FEMA authorized household aid in just 1.6% of Puerto Rico's flood declarations. Legally, these unexamined failures defeat judicial deference under *Seven County Infrastructure Grant v. Eagle Cnty.*, 145 S. Ct. 423 (2024) precedent, and violate *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983) oversight standards because the agency completely

¹⁴ Maria Gallucci, *Rebuilding Puerto Rico's Power Grid: The Inside Story*, Inst. Of Electrical & Electronic Engineers Spectrum (Mar. 12, 2018)

ignored these stark socioeconomic, geographic, and territorial disparities.

See ADDENDUM at Page 26.

Thirdly, the public demands that governments regulate health, safety, and welfare under police power, but constitutional limits like due process and regulatory takings set real boundaries. FEMA did not weigh the environmental effects of fossil fuel power plants in Puerto Rico's southeast region as required by NEPA rules and Executive Orders 14008 and 14096.¹⁵ The Executive Orders push for climate justice and racial fairness in federal work. Skipping an EIS blocked a deep look at the harm of repairing a polluting fossil fuel power grid and shut out communities from real input on a clean energy path.

By bypassing a comprehensive EIS, FEMA ignores acute public health crises within *La Ruta del Hambre* and completely overlooked Professor Ahmad's empirical data exposing a stark 4:1 contractor funding imbalance, a 38 percent rural penalty, and the total exclusion of Puerto Rico from federal risk indexes. Because an agency cannot look away from

¹⁵ *Tackling the Climate Crisis at Home and Abroad* (January 27, 2021), Exec. Order No. 14,008, 86 Fed. Reg. 7,619 (Feb. 1, 2021); *Revitalizing Our Nation's Commitment to Environmental Justice for All* (April 21, 2023), Exec. Order No. 14,096, 88 Fed. Reg. 25,251 (Apr. 26, 2023).

these structural disparities under *State Farm* or claim *Seven County* deference for choices it never evaluated, a full EIS is a vital public necessity to enforce the environmental justice mandates of Executive Orders 14008 and 14096 and secure a resilient transition to clean energy.

III. Democratizing Disaster Recovery: The Essential Role of the EIS in Aligning FEMA's Post-Maria Reconstruction with the Public Interest.

More to the point, by failing to consider renewable energy alternatives under a full EIS, FEMA perpetuates a cycle of disaster-and-rebuild, effectively institutionalizing vulnerability for a predominantly low-income and minority population.¹⁶ The Amici's core point is clear: NEPA's push to check options matters most when the plan hurts long-term health, safety and welfare for those hit hard by natural disasters.

A. The Economics of Reconstruction

Under Puerto Rico's present political status, marginalized communities hit hard by climate disasters face power outages that turn

¹⁶ See 40 C.F.R. § 1502.14 (2024) (requiring agencies to rigorously explore and objectively evaluate all reasonable alternatives in an EIS); Also see, Robert Walton, *supra*, at note 10; John Yoon, *supra*, at note 10; Andrea Zambrana-Rosario et al., *supra*, at note 10

into economic uncertainty.¹⁷ The Archipelago has faced a long-standing fiscal and debt crisis. By 2017, the territory had over \$70 billion in public debt and could not meet its obligations to creditors, including bondholders and pensioners. Unlike U.S. states, Puerto Rico cannot declare bankruptcy under Chapter 9 of the federal Bankruptcy Code. To bypass its responsibility in Puerto Rico's bankruptcy, Congress enacted the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), 48 U.S.C. 2101 et seq..

Under a process similar to bankruptcy, the Archipelago has a designated trustee in the form of the Fiscal Oversight and Management Board (FOMB). Also known as the "Junta de Control Fiscal," the FOMB approves Puerto Rico's 'budgets and fiscal plans', oversees debt restructuring and ensures compliance with PROMESA, and has broad authority to intervene in the territory's financial decisions to protect creditors and restore fiscal sustainability. The approved 'budget and

¹⁷ See generally Sarah M. Ladislaw, *Environmental Racism, Colonialism, and the Legacy of Hurricane Maria in Puerto Rico*, 34 Geo. Env't L. Rev. 367 (2022); Also see Council on Environmental Quality, *Environmental Justice: Guidance under the National Environmental Policy Act* (December 10, 1997) at 7

fiscal plans’ are the equivalent of a repayment plan in Chapter 13 or reorganization plan in Chapter 11 in bankruptcy court. The “Junta” can override local government decisions if they conflict with the approved ‘budget and fiscal plan.’ The FOMB’s authority extends to energy choices. Federal Judges monitor the bankruptcy proceedings, and the approved ‘budget and fiscal plans’ stand even if they go against what Puerto Rican leaders intend.¹⁸

Notwithstanding, the FOMB has no duty or intentions to implement the Puerto Rico Energy Public Policy Act, since it is not mandated by PROMESA.¹⁹ As a result of the Archipelago’s economic

¹⁸ See, *In re Fin. Oversight & Mgmt. Bd.*, 7 F.4th 31 (1st Cir. 2021); *Pierluisi v. Fin. Oversight & Mgmt. Bd. for P.R.*, 37 F.4th 746 (1st Cir. 2022); F. Fajana and L. Fiol-Matta, *The Scourge of the Insular Cases: Ending Constitutional Apartheid in Puerto Rico*, 92 REV. JUR. UPR 1 (2023).

¹⁹ Puerto Rico Energy Public Policy Act, PR Act No. 17-2019; Cathy Kunkel & Tom Sanzillo, *FOMB, New Fortress Energy Threaten Puerto Rico Resident Efforts to Install Life-Saving Rooftop Solar*, Inst. for Energy Econ. & Fin. Analysis (Oct. 21, 2024); Letter from Raúl Grijalva, Member of Cong., et al., to David Skeel, Chair, Fin. Oversight & Mgmt. Bd. for P.R. (May 17, 2024).; Staff Report, *Puerto Rico Energy Bureau’s Temporary Response to Electric Grid Woes is Problematic at Best, Corrupt at Worst*, Fla. Politics (Feb. 20, 2026)

downturn and political marginalization there is a surge of climate migrants moving to the mainland United States.²⁰

Sound economic imperatives dictate that the public be given a formal voice through a full EIS framework to its disaster reconstruction.

B. Public Interest in Energy Policy and International Law

FEMA's approach to rebuilding the energy grid still ignores the testimony, data, and legal arguments rooted in the Puerto Rico Energy Public Policy Act²¹, reports like the PR100,²² and civil rights organizations.

²⁰ Edwin Meléndez & Jennifer Hinojosa, *Estimates of Post-Hurricane Maria Exodus from Puerto Rico*, Centro de Estudios Puertorriqueños, at 1–3 (Oct. 2017); *Something Lost, Something Gained: The Tradeoffs of Puerto Rican Hurricane Maria Migrants*, 21 Int'l J. Env'tl. Res. & Pub. Health 11919788, at 5–8 (2024); *Climate Migration as Climate Resilience: A Case Study of Orlando, Florida*, 54 Env'tl. L. Rep. 10736, at 10738–40 (2024)

²¹ Puerto Rico Energy Public Policy Act, *supra*, at note 19

²² Launch of PR100 (February 2022), PR100 6-month Progress update (July 2022), PR100 One-Year Progress Summary Report (January 2023), and PR 100 Final Results (February 2024), available at National Renewable Energy Laboratory (NREL) at www.nrel.gov/publications; Also see M. Yazdanie, *Resilient Energy System Analysis and Planning Using Optimization Models*, 4 Energy & Climate Change 100097 (Dec. 2023); See also North Am. Elec. Reliability Corp., *2023 State of Reliability Overview* 7-8 (2023)

The Puerto Rico Energy Public Policy Act²³ aims to establish a comprehensive framework for transitioning the Island to 100% renewable energy by 2050. This legislation sets interim renewable energy targets of 40% by 2025 and 60% by 2040, while also mandating the phaseout of coal-fired power generation by 2028. However, the FOMB's fiscal oversight responsibilities have led to tensions with energy policy objectives. For instance, the FOMB has been involved in negotiations regarding the Puerto Rico Electric Power Authority's (PREPA) debt restructuring, which includes discussions about the utility's renewable energy investments and infrastructure plans.

Not only does the Agency's proposed course of action perpetuate fossil fuel dependency and economic vulnerability, but contradicts international law principles of self-determination, as articulated in the International Covenant on Civil and Political Rights and recognized by the International Court of Justice.²⁴ FEMA's action to opt out of an EIS

²³ Puerto Rico Energy Public Policy Act, *supra*, at note 19

²⁴ Article 1.1 of the *International Covenant on Civil and Political Rights* (ICCPR), 999 U.N.T.S. 171; U.S. Const. Art. IV § 2; *Missouri v. Holland*, 252 U.S. 416, 432 (1920); *United States v. Belmont*, 301 U.S. 324 (1937); *Zicherman v. Korean Air Lines Co.*, 516 U.S. 217, 226 (1996); Case Concerning East Timor (Portugal v Australia), ICJ Reports 1995, par. 29;

adds fuel to a long and heated history of environmental racism and colonial grabs. This history includes the U.S. Navy's toxic contamination in the Archipelago's island of Vieques,²⁵ the Jones Act's economic constraints in maritime exchange, among others.²⁶ FEMA's EIS skip keeps the history going taking away Puerto Ricans' right to determine their energy future and land protection.

Legal Consequences of the Separation of the Chagos Archipelago From Mauritius in 1965, Advisory Opinion, ICJ Reports 2019, par. 152.; Summary of the panel discussion on the negative impact of the legacies of colonialism on the enjoyment of human rights: Report of the Office of the UN High Commissioner for Human Rights, A/HRC/54/4, 1 June 2023, par. 23.

²⁵ Catalina M de Onis, *Energy Colonialism Powers the Ongoing Unnatural Disaster in Puerto Rico*, *Frontiers in Communication* (Jan 29, 2018); Sherrie Baver, *Environmental Justice and the Cleanup of Vieques at 8*, *Centro Journal*, City College of New York (March 2006); Nada Hassanein, *In Vieques, Puerto Rico, Cancer Rates are High. Advocates Say Navy Bombing May Be to Blame*, *USA Today* (June 14, 2023); see Hans Sanderson et al., *Civilian Exposure to Munitions-Specific Carcinogens and Resulting Cancer Risk for Civilians on Puerto Rican Island of Vieques Following Military Exercise From 1947 to 1998*, *Global Security: Health, Science and Policy* Vol. 2 No. 1, 40-61 (August 14, 2017); and, *Heterogeneity of Childhood Asthma Among Hispanic Children: Puerto Rican Children Bear a Disproportionate Burden*, 117 *Pediatrics* 43, 43-53 (2006).

²⁶ Colin Grabow and Alfredo Carrillo Obregon, *The Jones Act is Forcing Puerto Rico to Overpay for Energy*, *Cato Institute* (Jul. 25, 2022)

Community testimony and data gathered by the PR100²⁷ calls for agencies to review options that sustainable and resilient to environmental changes. Rooftop solar and microgrids count as distributed renewables, handle bad weather better, and cut greenhouse gases to zero. They give power back to communities by spreading out generations.²⁸

To conclude, FEMA's Utility PEA fell short on the public's interest in renewable energy rebuild alternatives for a sustainable and resilient energy grid.²⁹ Despite health, safety and welfare considerations, energy

²⁷ *Supra*, note 26

²⁸ *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 551 (1978); Mariah Espada, *Solar Power is Helping Some Puerto Rico Homes Avoid Hurricane Fiona Blackouts*, TIME, (September 20, 2022)

²⁹ Utilities PEA, *supra*, at 11, pages 25-26 (“**Alternative 3: Realignment or Relocation of Utilities** [...] Alternative 3 may have a beneficial impact on air quality and energy efficiency long-term by installing new industrial equipment that meets the USDOE's Office of Energy Efficiency and Renewable Energy standards. The Office of Energy Efficiency and Renewable Energy sets energy efficiency standards for new industrial products such as distribution transformers, pumps, boilers, and electric motors. By operating at a greater efficiency, it is possible that updated utilities would produce fewer emissions (USDOE 2020b). By installing industrial equipment that meets current efficiency standards, Alternative 3 activities would be in alignment with the Commonwealth's 2019 Energy Public Policy Act. The 2019 Act

policy and international law, the Utilities PEA left renewables out as a choice for Puerto Rico's future. In fact, just as Professor Ahmad's testimony on the national 3.99:1 funding disparity favoring corporate contractors over direct individual household assistance, the Utilities PEA does mention the Puerto Rico Energy Policy Act, but only to justify the procurement of fossil fuel equipment appealing to "efficiency" – not community sustainability or resiliency.³⁰ See ADDENDUM at Page 26.

IV. FEMA's Failure to Prepare an EIS Creates a Dangerous Precedent for Vulnerable Communities Nationwide

A. Reversal of the "Build Back Better" Agenda under the OBBB Act

The landscape of federal disaster policy has shifted dramatically following the passage of the One Big Beautiful Bill Act (OBBB).³¹ This sweeping domestic package effectively undid the previous

updates and unifies policy initiatives stated from several Acts regarding Puerto Rico's energy policy. The 2019 Act establishes the Puerto Rican energy public policy and guiding principles for the electric grid based on efficiency, formulates energy policy, and establishes goals and objectives for becoming more energy efficient and independent (PREPA 2019)."

³⁰ *Id.*

³¹ See One Big Beautiful Bill Act (OBBB), Pub. L. No. 119-1, 139 Stat. 1 (2025).

administration’s “Build Back Better” agenda³², which had prioritized climate-resilient infrastructure and the transition to clean energy. By dismantling the prior platform, the OBBB Act emphasizes a return to traditional, large-scale infrastructure projects, often favoring fossil-fuel-based systems.

In this context, FEMA’s reliance on “fossil entrenchment” in Puerto Rico is no longer just a procedural choice, but a reflection of a national policy pivot that prioritizes speed and industrial output over climate resilience mandates sought by marginalized communities.

B. FEMA is Not a Bank, it is a Policymaker

In the wake of the Supreme Court’s decision in *Loper Bright*, the era of “reflexive deference” to agency shortcuts is over. FEMA can no longer rely on a “programmatically wave-off” to avoid the rigorous environmental and social scrutiny required by a full Environmental

³² See Build Back Better Act, H.R. 5376, 117th Cong. (2021); Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818 (2022); and, UNDRR. 2017. *The Sendai Framework Terminology on Disaster Risk Reduction*. “Build back better”, *supra* note 4.

Impact Statement (EIS).³³ While the agency attempts to cloak its inaction in the “passive funder” logic of *Seven County*, the record proves that FEMA is the primary architect of Puerto Rico's energy future.³⁴

FEMA’s reliance on *Seven County*—arguing that it lacks the authority to dictate energy policy—is a legal fiction.³⁵ Unlike a mere secondary lender, FEMA holds the exclusive purse strings for the \$12 billion reconstruction. This funding is the *but-for* cause of the Archipelago’s continued fossil-fuel entrenchment. Post-*Loper Bright*, this Court must exercise its independent judgment to verify that FEMA’s decision to ignore decentralized renewables is not only reasonable but legally sound under the “hard look” mandate of NEPA.

³³ *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2262 (2024) (holding that courts “may not defer to an agency interpretation of the law simply because a statute is ambiguous”).

³⁴ *Seven County Infrastructure Grant v. Eagle Cnty.*, *supra*, at 16 (addressing the limits of an agency's duty to analyze environmental impacts it does not have the legal authority to prevent). *Note: We distinguish this by arguing FEMA’s multi-billion dollar allocation for specific fossil fuel infrastructure repair constitutes “control” in fact, if not in name.*

³⁵ *Id.*

As suggested by the testimony, data and legal argument presented by expert witness Prof. Nadia Ahmad, if the agency's choice results in a 4:1 funding disparity that leaves underrepresented communities in a cycle of vulnerability, the Court's duty is clear: it must reject the agency's narrow interpretation of its own "limited role" and order the comprehensive review the law—and the public interest—demands.³⁶ See ADDENDUM at Page 26.

C. Protecting Sovereignty and Self-Determination

FEMA must be held to a rigorous standard to ensure recovery policies do not authoritatively impose infrastructure plans that conflict

³⁶ *Also see* Nadia Ahmad, Uma Outka, Danielle Stokes & Hannah Wiseman, *Synthesizing Energy Transitions*, 39 Ga. St. U. L. Rev. 1087 (2023) (Survey of interdisciplinary literature on energy transitions and explains how modern energy policy must integrate principles of clean-energy development, equity, and energy justice to correct systemic inequities embedded in fossil-fuel-based systems. It argues that federal and state reforms must prioritize low-carbon energy investments while addressing the disproportionate burdens borne by marginalized communities.); Mark Dorosin, *Making America a Better Place for All: Sustainable Development Recommendations for the Biden Administration*, 51 ENV'T L. REP. 10310 (2021). (Federal infrastructure and environmental policies must prioritize human quality of life and social development to dismantle the structural racism that historically burdens marginalized communities with fossil-fuel dependency and inadequate service.)

with territorial and Tribal sovereignty or local self-determination. In states like New Mexico and Arizona, environmental justice requires the “meaningful involvement of all people, regardless of Tribal affiliation,” in agency decision-making.³⁷ Bypassing an EIS in Puerto Rico sets a precedent that federal agencies can disregard local laws – like the Puerto Rico Energy Public Policy Act³⁸- and the stated preference for renewable energy, directly threatening the autonomous decision-making of territorial and Indigenous communities regarding their own local affairs.³⁹ See ADDENDUM at page 26.

D. Interconnected Risks for the Diaspora

³⁷ See 40 C.F.R. § 1508(m)(1)-(2); see also Executive Order 12898, 60 F.R. § 7795 (stating that environmental justice requires the "meaningful involvement of all people, regardless of... Tribal affiliation" in federal agency decision-making that affects human health and the environment). This mandate is particularly critical in states with significant Indigenous populations, such as New Mexico and Arizona, where federal infrastructure projects under the OBBB, Pub. L. No. 119-1, 139 Stat. 1 (2025), must still adhere to the threshold "hard look" and public participation requirements of NEPA, 42 U.S.C. § 4332(2)(C).

³⁸ Puerto Rico Energy Public Policy Act, *supra*, at note 19

³⁹ *Supra*, note 40

The quality of Puerto Rico's recovery is a matter of national civil rights importance due to the deep connections with the Diaspora.⁴⁰ Grid instability and economic displacement on the Archipelago directly impact the social and economic infrastructure of states like Florida, which serves as a primary destination for those displaced by infrastructure failures.⁴¹ Ensuring FEMA adheres to climate-informed NEPA reviews is vital to the national public interest to mitigate the compounding crises of energy

⁴⁰ Without representation in Congress, Puerto Ricans in the Archipelago rely on the Diaspora for political support not available under their current colonial status. See Letter from 17 members of Congress to FEMA (Feb. 2021), JA374–377.

⁴¹ Dr. Fernando I. Rivera, *When the U.S. Sneezes, Puerto Rico Already Has a Cold*, 17 CONTEXTS 62 (2018). (Dr. Rivera is the Director of the Puerto Rico Research Hub at the University of Central Florida. His sociological research establishes that disasters in Puerto Rico are the product of entrenched social and political conditions rather than mere natural hazards, leading to a state of "parallel pandemics" where grid instability exacerbates existing economic and health inequities. This systemic failure has transformed Florida into a primary receiving community for "climate migration," as the fragility of the centralized fossil-fuel grid forces a massive exodus that strains the social and economic infrastructure of the Diaspora. By treating Puerto Ricans as "peripheral and conditional citizens" through a "deliberate contempt" in disaster relief compared to mainland states, federal policy has institutionalized a cycle of displacement and health disparities—such as the cancer crisis in "la ruta del hambre"—that necessitates a transition to distributed renewable energy to restore community social capital and stability.)

insecurity and socioeconomic marginalization that transcend geographic boundaries, regardless of shifting federal political platforms.

CONCLUSION

For the reasons stated, the District Court correctly found that FEMA's minimal analysis failed to meet the necessary thresholds under NEPA. To ensure a resilient and equitable future for Puerto Rico and all vulnerable communities nationwide, this Court must affirm the remand for a full Environmental Impact Statement (EIS).

Dated: May 20, 2026

Respectfully submitted,

/s/ Roberto Cruz Hernández
Roberto Cruz Hernández USDC-
PR No. 217006
Attorney
Southern Legal Counsel, Inc.
1229 NW 12th Ave,
Gainesville, FL 32601
(352) 271-8890
Email:
roberto.cruz@southernlegal.org

/s/ Lourdes Rosado
*Lourdes Rosado
President, General Counsel
LatinoJustice PRLDEF
475 Riverside Drive
New York, NY 10115
(212) 219-3360
Email: lrosado@latinojustice.org

/s/ Fermín L. Arraiza-Navas
Fermín L. Arraiza-Navas
USDC-PR No. 215705
Email: farraiza@aclu.org
(787) 966-3133
Annette Martinez-Orabona
Executive Director
Email: amartinez-orabona@aclu.org
American Civil Liberties Union of
Puerto Rico
Union Plaza, Suite 1105
416 Avenida Ponce de León
San Juan, Puerto Rico 00918
(787) 753-9493

*Pending Pro Hac Vice Admission

Attorneys for Amicus Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with type-volume limitations, because it is “no more than one-half the maximum length authorized by [the Federal Rules of Appellate Procedure] for a party’s principal brief.” Fed. R. App. P. 29(a)(5). This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) & (6), because it was prepared in proportionally spaced 14-point Century Schoolbook typeface, using Microsoft® Word for Microsoft 365 MSO (Version 2404 Build 16.0.17531.20152) 64-bit.

Dated: May 20, 2026

/s/ Roberto Cruz Hernández
Roberto Cruz Hernández

USDC-PR No. 217006

ADDENDUM

DECLARATION OF PROF. NADIA B. AHMAD, J.D., LL.M.

Comité Diálogo Ambiental, Inc., et al. v. Federal Emergency Management Agency, et al.

No. 25-2163 | United States Court of Appeals, First Circuit
FEMA Data Addendum | May 2026

RESEARCH SYNOPSIS & EXECUTIVE BRIEF

TITLE: *Inverting the Stafford Act: Data Voids, Rural Penalties, and the Arbitrary Architecture of Federal Disaster Recovery*

AUTHOR: Nadia B. Ahmad, J.D., LL.M., Ph.D. (*Professor of Law, Barry University; Ph.D., Yale School of the Environment*)

LINK: Nadia B. Ahmad, *Addendum: Declaration of Nadia B. Ahmad, J.D., LL.M.*, Southern Legal Counsel (May 2026), <https://www.southernlegal.org/news/comite-dialogo-ambiental-v-fema> (direct link at <https://static1.squarespace.com/static/6283b20d7013340d81fd360f/t/6a0cd09ef303072eadc166d7/1779224736193/07+-+ADDENDUM+-+Rev.pdf>).

AUTHOR PROFILE & CREDENTIALS

Professor Nadia B. Ahmad coordinates the Environmental & Earth Law Program at Barry University School of Law, with a Ph.D. from the Yale School of the Environment, and has taught at Yale Law School. She holds a J.D. from the University of Florida, an LL.M. from the University of Denver, and an M.Phil. from Yale. A co-author of the seminal textbook *Environmental Justice: Law, Policy & Regulation*, she has published over 50 law review articles. In 2023, her global advocacy for frontline communities culminated in the United Nations Human Rights Prize. She is also the founder of Mudder AI, a climate-tech startup backed by Yale Ventures and Google.

ABSTRACT & EXECUTIVE SUMMARY

This document outlines an empirical critique of the Federal Emergency Management Agency's (FEMA) contemporary disaster recovery framework. Utilizing five federal datasets spanning 2000–2025—including FEMA disaster summaries, historical loss matrices, and social vulnerability indexes—the research exposes an arbitrary national pattern of structural inequality. The data demonstrates how top-down administrative shortcuts systematically divert resources from marginalized families to corporate contractors, lock out community participation, and entrench severe geographic, racial, and territorial disparities.

TAXONOMY OF SYSTEMIC DISPARITIES (EMPIRICAL FINDINGS)

The Corporate Contractor Imbalance: Nationally, FEMA awards Public Assistance (PA) to government infrastructure entities and corporate contractors at a **3.99:1 ratio** over direct Individual and Households Program (IHP) grants. This disparity worsens to a **4.26:1 ratio** across the South and Southwest.

The 38 Percent Rural Penalty: Completely rural counties face a **38% national deficit** in household recovery grants compared to metropolitan cores, despite carrying 46% higher baseline poverty rates and double the concentration of manufactured housing.

The Inverse Damage Relationship: Communities experiencing the highest absolute disaster losses receive the least proportional household support per dollar of damage (e.g., Louisiana received a mere 3.05 IHP grants per billion dollars of damage).

The Chronic Exposure Gap: In high-exposure counties hit by 20 or more federal disaster declarations, individual household assistance was denied or completely absent in **83 out of every 100** recurring events.

The National Risk Index (NRI) Territory Void: FEMA's primary tool for measuring hazard risk and resilience contains **zero usable data** for

any U.S. territory. All 78 Puerto Rico local municipalities are blank spaces coded as "Insufficient Data." Consequently, while flooding caused \$26.8 billion of Puerto Rico's \$28 billion in documented losses, FEMA authorized household aid in just **1.6%** of its flood declarations.

The Tribal Mitigation Trap: Sovereign tribal nations are systematically excluded from Hazard Mitigation funding due to resource-intensive five-year administrative planning cycles imposed without adequate federal funding or support.

CORE ADMINISTRATIVE IMPLICATIONS

FEMA's current framework actively inverts the household-supplementing mandate of the Stafford Act, abdicates the federal nation-to-nation trust responsibility to tribes, and triggers serious Fifth Amendment rational-basis challenges by systematically underfunding rural and territorial communities.