

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ELIZABETH DELGADO SANTOS,
RAFAEL OCASIO BARRETO,
BETHZAIDA CRESPO VICENTE,
and IRIS OTERO, on behalf of
themselves and all similarly situated
individuals

Plaintiffs,

-against-

FEDERAL EMERGENCY
MANAGEMENT AGENCY,
WILLIAM BROCK LONG,
THOMAS VAN ESSEN, and
ALEJANDRO DE LA CAMPA,

Defendants.

CIVIL ACTION NO. 4:18-cv-40111-TSH

**FIRST AMENDED CLASS ACTION
COMPLAINT SEEKING INJUNCTIVE
AND DECLARATORY RELIEF**

1. The United States Federal Government and the Federal Emergency Management Agency (“FEMA”) have overwhelmingly failed the people of Puerto Rico before, during and after Hurricane Maria, the worst natural disaster to hit the island in 100 years, and they continue to do the same. Hurricane Maria ravaged Puerto Rico in September 2017. The storm destroyed nearly 100,000 homes, displaced thousands of Puerto Rican families, and left the island largely uninhabitable. The federal response—in stark contrast to presidential and agency responses to Hurricanes Harvey in Texas and Irma in Florida approximately one

month earlier—was slow, insufficient and ambivalent.¹

2. On September 30, 2017, before Maria had fully dissipated, President Donald J. Trump tweeted that Puerto Ricans “want everything to be done for them.” On October 12, 2017, just ten days after Maria dissipated, President Trump tweeted: “We cannot keep FEMA, the Military & the First Responders . . . in P.R. forever!” In contrast, on August 30, 2017, approximately two weeks after Hurricane Harvey hit Texas, the President tweeted: “After witnessing first hand [*sic*] the horror & devastation caused by Hurricane Harvey, my heart goes out even more so to the great people of Texas.”

3. Presidential tweets have become a proxy for executive attention and government action. While hundreds of Hurricane Harvey victims remain sheltered in hotels and motels and thousands more are safe in alternate housing arrangements made by or through FEMA, the agency seeks to evict approximately 2,000 Puerto Rican Hurricane Maria survivors from their current (and only) homes.

4. Against this backdrop, four such survivors, Plaintiffs Elizabeth Delgado Santos, Rafael Ocasio Barreto, Bethzaida Crespo Vicente and Iris Otero

¹ Hurricane Irma also impacted Puerto Rico. Nevertheless, the bulk of FEMA’s response and public attention surrounding Irma focuses on Florida and the Southeast. Unless otherwise indicated in this First Amended Complaint, all references to Irma are to that storm’s impact on Florida and the surrounding region and FEMA’s response in the same area of the continental U.S., not the island of Puerto Rico.

(collectively, “Plaintiffs”), by and through their undersigned attorneys, bring this First Amended Complaint against FEMA, William Brock Long, Thomas Van Essen and Alejandro De La Campa, on behalf of themselves and all similarly situated individuals.

I.

PRELIMINARY STATEMENT

5. This is an action to hold unlawful and set aside certain actions of FEMA, the federal agency charged by statute to care for Americans who are victims of natural disasters; and to compel FEMA to take other necessary actions that it has unreasonably delayed or unlawfully withheld from Puerto Rican evacuees, placing them at risk of significant, irreparable injury. Contrary to its charge, FEMA plans to prematurely abort assistance to thousands of Puerto Ricans displaced by Hurricane Maria. FEMA previously announced that effective June 30, 2018, it would discontinue its Transitional Sheltering Assistance (“TSA”) program to Puerto Rican evacuees of Hurricane Maria (hereinafter “TSA evacuees”). Through TSA, FEMA provides direct funding to hotels and motels that serve as shelter for thousands of individuals and families who were forced to evacuate Puerto Rico after the hurricane severely damaged or destroyed their homes and communities. Their homes remain uninhabitable due to the hurricane damage and many of their communities lack fundamental infrastructure and

medical support these families need to survive. While FEMA offered Plaintiffs a one-way airline ticket to return to their “homes” in Puerto Rico, the offer is illusory as it provides a “ticket to nowhere”; there are no homes to which these families can return. FEMA is forcing these citizens to become homeless, and in doing so, attempting to shift the legal, financial and social responsibility from itself, where it belongs, to the local, state and municipal communities in which these individuals live.

6. Because FEMA’s termination of TSA would have left the TSA evacuees with no place to go, Plaintiffs filed an initial Complaint and an Emergency Motion For A Temporary Restraining Order Or Preliminary Injunction And Declaratory Relief on June 30, 2018—the day before the TSA evacuees would have been forced out of their hotel rooms. Prior to initiating this lawsuit, Plaintiffs and the organizations that support them believed in good faith that FEMA would again extend the TSA program, just as it had done before for TSA evacuees and in the aftermath of earlier hurricanes that displaced citizens from their homes in the continental United States. In the week before Plaintiffs and the class were to be evicted, it became clear that FEMA would not similarly extend TSA benefits to Puerto Rican hurricane survivors.

7. On June 30, 2018, the Honorable Leo T. Sorokin entered a Temporary Restraining Order (“TRO”), enjoining Defendants and their agents from

terminating the TSA program until at least midnight July 3, 2018, enabling Plaintiffs and the class to stay in transitional shelters until checkout time on July 4, 2018. The Court further ordered Defendants and their agents to provide notice and take whatever action is necessary to extend the assistance until the aforementioned deadline.

8. FEMA's response was quick, but insufficient, announcing only that the agency would extend transportation assistance in the form of flights back to Puerto Rico until August 30, 2018. The announcement made no mention of any temporary housing or support during the two-month gap in time between FEMA's eviction of TSA evacuees and their return flights.

9. On July 3, 2018, the Honorable Timothy S. Hillman, ordered that the TRO remain in place until at least midnight July 23, 2018, enabling Plaintiffs and the class to continue to have temporary housing at least to that date and pending further order of the Court.

10. But for the TRO, many TSA evacuees would now be homeless. FEMA's unlawful termination of TSA is without *any* plan to transition into longer-term housing some 2,000 TSA evacuees who have already faced severe trauma and lost most, if not all, of their belongings, their homes and their jobs. For Plaintiffs and many other TSA evacuees, especially the poor, elderly and sick, returning to their homes (or what is left of their homes) and communities in Puerto Rico is not

a viable option. Through no fault of their own, TSA evacuees simply lack the resources to either relocate in the continental United States or return to Puerto Rico at this time. In such circumstances, FEMA is the agency charged with providing assistance to these citizens.

11. This action, therefore, is brought by four named Plaintiffs, on their own behalf and on behalf of a class of people similarly situated, seeking an order that FEMA obey the laws put into place to address the problems associated with disasters such as Hurricane Maria and continue FEMA's TSA program until all eligible individuals have either received temporary housing assistance or found alternative, permanent housing.

12. Defendants' conduct violates (a) the substantive and procedural components of the Due Process Clause; (b) three substantive provisions of the Administrative Procedures Act ("APA"); (c) the equal protection component of the Due Process Clause; and (d) Section 308 of the Stafford Act, which requires nondiscrimination in disaster assistance. Each of these violations independently warrants declaratory relief under Section 2201 of the Declaratory Judgment Act and declaratory and injunctive relief in their own right.

13. As to the APA, Section 706(2)(B) requires courts to hold unlawful and set aside any agency action that is contrary to constitutional right, power,

privilege or immunity. Because Defendants' conduct violates due process, the Court must also hold such action unlawful and set it aside.

14. Second, Section 706(2)(A) of the APA requires courts to hold unlawful and set aside any agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Defendants' decision to terminate TSA to thousands of evacuees without any plan to transition evacuees into longer-term housing is arbitrary and capricious. FEMA's announcement to terminate TSA was done without any analysis or basis in fact to support its decision to treat the Puerto Rican evacuee's differently than prior hurricane survivors who lost their homes. Nor has FEMA's decision provided these families any rights of appeal or review before they were to be summarily evicted.

15. Third, Section 706(1) of the APA requires courts to compel agency action where such action has been unlawfully withheld or unreasonably delayed. Defendants have decided to terminate TSA on the one hand, while unreasonably delaying activation of any replacement housing assistance on the other hand. They should be compelled to continue TSA until FEMA provides eligible evacuees sufficient Temporary Housing Assistance ("THA") and implements an adequate replacement solution, or until Plaintiffs and class members have each been relocated into alternate housing.

16. Plaintiffs seek such relief because it appears that, absent judicial

oversight, the victimization of evacuees will continue.

II.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction in this action under 28 U.S.C. § 1331 (action arising under the laws of the United States), 28 U.S.C. § 1361 (action to compel officer or agency to perform duty owed to Plaintiff), and 5 U.S.C. §§ 701-706 (judicial review under APA). An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a), and this Court may grant declaratory relief, injunctive relief and other relief against Defendants pursuant to 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 705-706.

18. Venue in this Court is proper under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District.

III.

PARTIES

A. INDIVIDUAL PLAINTIFFS

19. Plaintiff ELIZABETH DELGADO SANTOS is a 35-year old woman from San Juan, Puerto Rico. She relocated as a hurricane evacuee to Holyoke, Massachusetts on January 9, 2018 with her 6-year old daughter to live with her mother. Ms. Santos also has a 12-year old son who was being cared for by her

mother. Ms. Santos left Puerto Rico because the roof of the home she had been living in was severely damaged, allowing water to seep in throughout the home. In addition, flood damage caused her to lose almost all her personal belongings. The home in which Ms. Santos was living in Puerto Rico was an inheritance from her father; however, Ms. Santos is one of six children, and legal title has not yet been conferred. This made Ms. Santos ineligible to receive any assistance to make the repairs necessary to make the home livable. Ms. Santos' son suffers from depression and has been diagnosed ADHD. Ms. Santos' daughter was unable to attend school in Puerto Rico for at least two months and the school was on a closure list. When Ms. Santos left Puerto Rico, the power had yet to be restored to her neighborhood. Ms. Santos and her two children were unable to remain in her mother's house more than a few weeks, rendering Ms. Santos and her children homeless. Ms. Santos applied for and received TSA assistance from FEMA and has lived in a hotel in Worcester, Massachusetts since February 7, 2018. If Ms. Santos and her two children are evicted from their temporary hotel room, they will be left homeless.

20. Plaintiff RAFAEL OCASIO BARRETO is a 48-year-old man from San Juan, Puerto Rico. He relocated as a hurricane evacuee to New York City on October 31, 2017, after first going to Miami, Florida on October 6, 2017, and Connecticut on approximately October 16, 2017. Mr. Ocasio Barreto relocated as

an evacuee due to his precarious living situation. He currently resides in a hotel under the TSA program in New York. Mr. Ocasio Barreto has no residence to return to in Puerto Rico. He has experienced depression, anxiety and various mental health conditions for which he has sought and continues to receive treatment in New York. Mr. Ocasio Barreto has searched for, but has been unsuccessful in securing permanent housing. If he is evicted from his temporary hotel room, he will be left homeless.

21. Plaintiff BETHZAIDA CRESPO VICENTE is a 36-year-old woman who self-evacuated from Dorado, Puerto Rico, with her three children and husband on November 16, 2017. Ms. Crespo Vicente and her family currently reside in a hotel under the TSA program in central Florida. Ms. Crespo Vicente had rented a home in Puerto Rico, which was completely destroyed by Hurricane Maria. As a result, she was forced to temporarily relocate to her mother-in-law's home, where nine people were living in a small house with no electricity. Ms. Crespo Vicente's children could not attend school in Puerto Rico, which had been temporarily closed due to the impact of the hurricane. Ms. Crespo Vicente suffers from manic depressive disorder, anxiety and scoliosis, for which she is awaiting surgery in Florida. Ms. Crespo Vicente had to undergo emergency surgery in March 2018 to address a growth on her uterus. Since her recent surgery, she stopped receiving public assistance because her mail was not being accepted at the extended-stay

hotel where she and her family currently reside. Ms. Crespo Vicente's husband is working; however, they have not been able to earn sufficient income to pay the security deposit for an apartment or ensure they can adequately cover rental costs and transition into permanent housing. Ms. Crespo Vicente's husband suffers from high blood pressure and stomach disorders, which require medical attention that he has sought in Florida. The Crespo Vicente family has no other available housing options, and if they are evicted from their temporary hotel room, they will be left homeless.

22. Plaintiff IRIS OTERO is a 39-year-old woman who self-evacuated from San Juan, Puerto Rico, with her five children after Hurricane Maria devastated the island. Ms. Otero is a single mother who was living in public housing that was completely destroyed by the hurricane. Ms. Otero's landlord would not repair her apartment or the public housing building in Puerto Rico, which became infested with rats as the front door to her apartment was blown away during the hurricane. Ms. Otero and her children currently reside in a hotel under the TSA program in central Florida. Ms. Otero's three oldest children suffer from ADHD, a condition of diagnosed hyperactivity that requires ongoing psychological or psychiatric care and supervision. Her children's schools in Puerto Rico were closed indefinitely. Three of Ms. Otero's children have other learning disabilities, which makes it extremely difficult for her to relocate them again based

on their educational needs and the level of care required for their growth and well-being. She has no assistance or support in Puerto Rico to help her re-establish herself and her children there, as her mother is elderly and suffers from several medical conditions. Ms. Otero has not received public assistance in Florida and cannot afford to move to more permanent housing. Ms. Otero feels desperate and scared and has suffered from insomnia and stress at the prospect of finding herself and her five children homeless. Ms. Otero and her children have no other available housing options, and if they are evicted from their temporary hotel room, they will be left homeless.

B. CLASS PLAINTIFFS

23. Plaintiffs bring this action on their own behalf and on behalf of all those similarly situated.

24. Plaintiffs seek to represent a class consisting of all persons who (a) as of September 16, 2017, resided in Puerto Rico, declared to be a Federal Disaster Area due to Hurricane Maria; (b) have applied for and received TSA under the Stafford Act, pursuant to 42 U.S.C. § 5174(a) through (d) and the federal regulations promulgated thereunder; (c) are currently residing in TSA housing; (d) have not been able to secure alternative housing; and (e) will have their TSA discontinued upon expiry of the TRO or such other temporary relief ordered by the Court.

25. Each of the requirements of Federal Rule of Civil Procedure 23(a) is met.

26. Members of the class are so numerous that joinder of all members is impracticable, and individual litigation by each would necessarily and substantially burden the operation of the judicial system and is prohibitive because the individual class members lack the knowledge and financial means to maintain individual actions. In addition, the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications establishing incompatible rules of law for the provision of disaster relief.

27. The number of class members can best be estimated from records in the control of Defendants. They are believed to number in the hundreds.

28. There is a well-defined community of interest in the questions of law and fact involving the claims of the members of the class, in that FEMA has systemically applied the policies and practices challenged in this action to wrongfully, arbitrarily, discriminatorily and unequally discontinue the TSA program under the Stafford Act before evacuees have secured alternative housing. There are common questions of law or fact.

29. The claims of the named Plaintiffs are typical of the class members in that each named Plaintiff, due to the challenged policies and practices of FEMA: (a) has been displaced by Hurricane Maria and/or had their primary pre-disaster

residence rendered uninhabitable; (b) is currently receiving TSA; and (c) will be displaced if FEMA discontinues TSA as it threatens to do.

30. The named Plaintiffs will adequately and fairly represent and protect the interests of the class because each named Plaintiff has suffered the same or similar harm, and has the same or similar interest in redress of his/her rights as all other members of the class, and thus their interests overlap and do not conflict. The attorneys representing Plaintiffs, LatinoJustice PRLDEF, Manatt, Phelps, & Phillips, LLP and Hector E. Pineiro, are experienced and capable litigators possessed of sufficient resources to adequately protect and represent the interests of the Plaintiff class.

31. The requirements of Federal Rule of Civil Procedure 23(b)(2) are met in that the regulations, practices and procedures which are the subject of this lawsuit have been applied to the members of the class as a whole, and Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole. A class action is the exclusive method by which the interests of all affected persons can be adequately protected.

C. DEFENDANTS

32. Defendant Federal Emergency Management Agency was created in 1979 as a result of the merging of several federal agencies that handled disaster-

related responsibilities. FEMA is the federal agency designated by the President to administer the THA program in accordance with the provisions of the Stafford Act and the federal regulations. As an agency of the federal government, FEMA's actions are directed and carried out by other agencies and individuals. When used in this Complaint, the acronym "FEMA" shall be understood to refer not only to that agency, but to the Defendants listed below as well.

33. Defendant William Brock Long has been the Director of FEMA from June 20, 2017, through the present.

34. Defendant Thomas Van Essen is the FEMA Regional Director with administrative responsibility for FEMA's response to Hurricane Maria victims from Puerto Rico.

35. Defendant Alejandro De La Campa is the Director of FEMA's Caribbean Area Division, which implements and coordinates all emergency management programs in Puerto Rico.

IV.

BASIS FOR RELIEF

36. This action and the relief requested are authorized under 28 U.S.C. § 1361, 28 U.S.C. § 2201, 28 U.S.C. § 2202, 28 U.S.C. § 2412(b), 42 U.S.C. §§ 5151, 5174, and 5 U.S.C. §§ 701 *et seq.* and the federal regulations promulgated thereunder, and the Due Process Clause of the Fifth Amendment to

the United States Constitution.

37. Under the Stafford Act, victims of a disaster are eligible for “financial or other assistance” to meet their housing needs if they have been “displaced from their pre-disaster primary residences,” or their pre-disaster primary residences “are rendered uninhabitable as a result of damage caused by a major disaster.”

42 U.S.C. § 5174(b)(1).

38. 42 U.S.C. § 5170b(a)(3)(B), also known as the Stafford Act’s “public assistance” provision, gives FEMA the power to perform “work or services essential to saving lives and protecting and preserving property or public health and safety, including . . . emergency shelter . . .” Under this authority, FEMA provides short-term TSA to disaster survivors who cannot return to their homes after congregate shelters have closed. In most cases, assistance is provided through direct payments to hotels and motels.

39. Under the Stafford Act, victims of a disaster are also eligible for Temporary Housing Assistance. THA is available for 18 months from the date that the President declared a disaster, but may be extended beyond that time. 44 C.F.R. § 206.110(e).

40. There are four forms of THA: (1) money for renting alternate housing (“Direct Rental Assistance”), (2) rent-free occupancy in federally provided temporary housing, (3) money for repair of owner-occupied housing, and (4)

money for replacement of owner-occupied housing. 42 U.S.C. § 5174(c); 44 C.F.R. § 206.117(b).

41. Applications for THA, and for the distribution of federal benefits pursuant to the Stafford Act, must be done in “an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.” 42 U.S.C. § 5151(a).

42. On September 18, 2017, President Donald J. Trump declared a state of emergency in the Commonwealth of Puerto Rico. President Trump’s declaration required FEMA to provide assistance in a nondiscriminatory manner under the Stafford Act. FEMA’s duty to provide assistance to victims of Hurricane Maria was mandatory, not discretionary.

V.

SUMMARY OF FACTS

A. PUERTO RICO

43. Puerto Rico, officially known as the Commonwealth of Puerto Rico (Estado Libre Asociado de Puerto Rico), is an unincorporated territory of the United States, located in the northeastern Caribbean. Puerto Rico is only 100 miles long by 35 miles wide, making it the smallest island of the Greater Antilles. Puerto Rico consists of an archipelago that includes the main island of Puerto Rico and

several smaller islands—Vieques, Culebra, Mona and numerous islets—all ravaged by Hurricane Maria.

44. For more than a century, Puerto Rico and its residents (which number 3.4 million) have occupied a unique place as American citizens, but are culturally, linguistically and economically distinct from most citizens born in the continental United States.

45. Economically, Puerto Rico was suffering before Maria. Some 45 percent of the island's 3.4 million residents lived in poverty with an unemployment rate of 10.5 percent and more than 16,000 homeowners were facing foreclosure. In contrast, less than 13 percent of Americans as a whole live below the poverty line. Comparative studies regarding the forms of vulnerabilities between Puerto Rico, Florida and affected Hurricane counties in Texas after the hurricanes that affected those regions found poverty rates in affected counties in Texas at 15% (2016) versus Florida 14.7% and Puerto Rico 43.5%. Compounding the predicament of the evacuees in the TSA program, the Government of Puerto Rico before Irma or Maria found itself in a debt crisis with more than \$73 billion in bond debt as well as over \$50 billion in pension obligations.²

46. While Puerto Ricans are citizens of the United States, they have

² <https://www.oxfamamerica.org/explore/research-publications/far-from-recovery-puerto-rico-six-months-after-hurricane-maria/>.

unique national origin and identity, and discrimination on such basis or on the basis of their “citizenship” as Puerto Ricans is strictly prohibited under the Constitution. *Zappa v. Cruz*, 30 F. Supp. 2d 123, 129-30 (D.P.R. 1998), *aff’d sub nom. DiMarco-Zappa v. Cabanillas*, 238 F.3d 25 (1st Cir. 2001). Such discrimination, as well as discrimination based on race, color, economic status, English proficiency and national origin, are directly implicated by FEMA’s disparate treatment of Puerto Rico, Hurricane Maria survivors and the TSA evacuees.

B. HURRICANE MARIA

47. On September 20, 2017, Hurricane Maria hit Puerto Rico. The hurricane, classified as a Category 5 storm, was the worst natural disaster in Puerto Rico in over a hundred years, crippling the island’s infrastructure and causing an estimated \$90 billion in damage. Maria did not dissipate until October 2, 2017.

48. Hurricane Maria devastated the electrical grid, causing a one-hundred percent blackout in Puerto Rico and leaving hundreds of thousands of residents without power for months. Currently, ten months after the hurricane hit the island, there are still thousands of residents whose electricity has not yet been restored.

49. The hurricane severely, if not permanently, damaged tens of thousands of homes and left nearly 75,000 Puerto Ricans without housing.

Although this problem has yet to be fully resolved, FEMA insists that the Plaintiffs and class members who have no safe or habitable home on the island must return to Puerto Rico rather than remain in TSA-financed housing.

50. Many municipalities throughout the island were without potable water, or any kind of running water, for weeks or months at a time, creating a public health hazard and concern for healthcare and nutritional assistance for all residents.

51. As a result of the lack of drinking water, combined with contaminated sources of water that residents were told were safe for drinking, cases of leptospirosis, a potentially deadly bacterial disease that is water-borne, began to break out, putting at risk up to two million residents of Puerto Rico.³

52. The lack of electricity and infrastructure damage extended to healthcare facilities and hospitals; most were running on generators, and some had no electricity even by generators. Residents were told not to seek out healthcare services unless it was an emergency, given the lack of medical equipment, personnel, facilities in a condition to tend to patients, and electricity.

53. It is estimated that the lack of available and accessible healthcare

³ <https://q13fox.com/2018/07/03/bacterial-disease-in-puerto-rico-blamed-for-deaths-after-hurricane-maria/>.

services, electricity, food and drinking water, in addition to widespread environmental and water contamination, dangerous housing conditions, broken infrastructure, damaged roads and centralization of aid led to the deaths of approximately 4,645 Puerto Ricans, and perhaps thousands more—a number far higher than in either Hurricane Harvey or Irma.⁴

54. Since the hurricane, Puerto Rico has seen a steep increase in the number of suicides and mental health issues, including post-traumatic stress disorder.

55. As a result of the damage inflicted on Puerto Rico by Hurricane Maria, thousands of Puerto Ricans became displaced and sought assistance on the mainland United States. It is estimated that between 100,000 and 300,000 Puerto Ricans left the island in the months following the hurricane to seek stable housing, employment and healthcare services. In addition, Puerto Ricans have left the island pursuing schooling options as 265 schools have closed on the island since Hurricane Maria.⁵

56. Evacuees are spread out across the country, with the highest concentration in Florida, particularly central Florida, as well as in the New York City metropolitan and tri-state area, Philadelphia, Chicago, Boston, Pennsylvania

⁴ <https://www.wsj.com/articles/puerto-rico-data-suggests-hurricane-maria-death-toll-is-much-higher-1528928688>.

⁵ <https://www.nytimes.com/2018/06/01/us/puerto-rico-school-closings.html>.

and elsewhere throughout the United States.

57. Many evacuees are families or single parents with children, who have already been enrolled in local schools. Some of the evacuees are elderly individuals who have arrived by themselves, with no family support or alternative housing options.

C. THE FEDERAL RESPONSE TO MARIA COMPARED TO RESPONSES TO HURRICANES IRMA AND HARVEY

58. As Hurricane Maria ravaged Puerto Rico, FEMA relief efforts were well underway in Florida and Texas in response to Hurricanes Irma and Harvey, respectively. A comparison of FEMA's response (as widely reported by media, nonprofit organizations and FEMA itself) to these three (and other) hurricanes compels the conclusion that FEMA's response in Puerto Rico was not only inadequate, it was also unequal and discriminatory in violation of law.

59. FEMA's unequal treatment of Puerto Ricans started before Maria hit the island. In preparation for both Harvey and Irma, FEMA was on the ground before each storm made landfall. For Hurricane Harvey, FEMA had supplies and personnel positioned in Texas before the storm made landfall on August 25, 2017. Within days, the number of FEMA employees, other federal agencies, and the National Guard deployed exceeded 31,000. Despite being already positioned in Houston in response to Harvey, even more federal personnel responded to Hurricane Irma when it made landfall in Florida on September 10, 2017. More

than 40,000 federal personnel, including 2,650 FEMA staff, were in place four days later. In comparison (according to a FEMA tweet on September 25, 2017) only 10,000 federal staff were on the ground in Puerto Rico and the Virgin Islands—almost a week after Maria hit the ground.⁶

60. FEMA's unequal response in Puerto Rico continued after Maria made landfall. For instance, within six days of Hurricane Harvey hitting Texas, U.S. Northern Command had deployed 73 helicopters over Houston, which are critical for saving victims and delivering emergency supplies. It took more than three times as long after Maria hit before there were as many helicopters in the air.

61. Within 9 days of Harvey hitting Texas, FEMA had approved \$141.8 million in individual assistance to Harvey victims. Within 9 days after Maria, FEMA had approved only \$6.2 million for Maria victims. During the same time period, FEMA provided 5.1 million meals, 4.5 million liters of water and over 20,000 tarps to Houston; but within 9 days of Maria, it delivered only 1.6 million meals, 2.8 million liters of water and roughly 5,000 tarps to Puerto Rico.

62. The contrast with Irma is starker. Within 9 days of Irma, FEMA delivered 10.9 million meals, 7 million liters of water and over 98,000 tarps. Within just 4 days of Irma hitting the ground, FEMA had transferred 6.6 million meals and 4.7 million liters of water to states in the Southeast.

⁶ <https://twitter.com/fema/status/912340037882216449>.

63. FEMA's comparatively slow approach in Puerto Rico (which had already been impacted by Irma as well) continued long after FEMA's initial mobilization. For instance, FEMA took 43 days to approve permanent disaster work for Puerto Rico. The agency approved similar work for Texas within 10 days after Harvey. The federal government has also placed a host of unique regulatory hurdles and conditions on Puerto Rico's receipt of aid. FEMA's uneven and discriminatory treatment of Maria survivors continues.

D. FEMA PROVIDES TRANSITIONAL SHELTERING ASSISTANCE TO EVACUEES.

64. On October 30, 2017, FEMA announced that TSA would be available to Puerto Ricans "unable to return to their homes because they are displaced as a result of Hurricanes Irma and Maria." (FEMA News Release Number DR-4339-PR NR 038.) FEMA explained that "Transitional Sheltering Assistance allows eligible applicants to shelter in a hotel or motel, for a limited period of time, as a bridge to intermediate and longer-term housing." FEMA also promised to provide transportation to TSA evacuees for their return to Puerto Rico, but noted that "[a]pplicants should expect that it may take several weeks to arrange transportation, given the limited availability of commercial flights."

65. Prior to Hurricane Maria, TSA had only been offered to survivors of natural disasters whose home were rendered uninhabitable. However, following Hurricane Maria, based on information and belief, FEMA extended the TSA

program to *all* Puerto Rican evacuees due to the overall devastation of infrastructure on the island, depriving citizens of basic necessities such as water and electricity, in addition to safe, habitable shelter.

66. Among the displaced Puerto Rican evacuees, thousands began receiving TSA from FEMA, which included vouchers for extended stays in hotels around the country or in temporary housing facilities, although some were denied these benefits outright. Many of the households that initially received TSA were later cut off. Many thousands more left the island and likely found family members, friends, or acquaintances to stay with, even if temporarily. Others have ended up directly in homeless shelter systems throughout various states. The TSA program was scheduled to end for Puerto Ricans on January 13, 2018, leaving the remaining TSA evacuees still in hotels and motels with no place to go.

67. In a memorandum, date stamped December 29, 2017, FEMA approved a TSA extension to run from January 14, 2018 through March 20, 2018. FEMA noted that “[t]his extension [wa]s needed due to a large number of damaged homes across the island and lack of available utilities in many areas. Survivors are still in need of short-term, temporary sheltering options while their homes are restored and repaired.” These conditions persist today.

68. The extension did not apply to all TSA evacuees. Throughout the TSA process, FEMA has periodically ended eligibility for certain Maria survivors,

reducing the number of overall TSA evacuees that remain in the program.

69. On April 20, 2018, FEMA approved another extension of the TSA program. In its news release announcing the extension (FEMA News Release Number 159), FEMA stated that of approximately 2,800 TSA evacuees remaining in the program, 1,700 were now ineligible for TSA, but would be allowed to continue participating. Many of these evacuees had been pressured into “voluntarily” withdrawing their applications or were deemed to have voluntarily withdrawn an application after being unavailable for an on-site inspection. Many others did not own a home that was damaged but had nevertheless been displaced from their residences (whether rentals or otherwise) and had no place to return to in Puerto Rico. These economic circumstances now rendered them ineligible for TSA according to FEMA. Nevertheless, FEMA allowed them to continue participating in the program.

70. In total, the TSA program was extended at least three times in order to avoid massive secondary displacement of TSA evacuees, the overwhelming majority of whom had not been able to secure employment or long-term housing.

71. Prior to each extension, individuals and families participating in the TSA program experienced anxiety and high levels of uncertainty about what would happen to them, given inconsistent and deficient communications from FEMA, and the stark reality that most evacuees had not been successful in securing longer-term

housing or employment.

E. DEFENDANTS PLAN TO TERMINATE TSA AS SOON AS THE TRO EXPIRES.

72. The current TSA program for victims of Hurricane Maria was scheduled to permanently expire on June 30, 2018, and FEMA has stated that it will not consider any further extension requests.

73. Hundreds of families are still in hotels under TSA, unsure where they will go when FEMA terminates TSA. Unable to secure alternative longer-term housing solutions, they will likely end up in homeless shelters, return to precarious housing and employment situations in Puerto Rico, or worse—living on the street. Families currently under the TSA program have asked that the program be extended until they can transition to long-term housing.

74. There are approximately 2,000 TSA evacuees throughout the United States, including Plaintiffs, who (a) were displaced from their homes by Hurricane Maria; (b) were given a voucher by FEMA to seek lodging in a hotel; (c) have remained in the TSA program until the present time with FEMA paying for their temporary hotel residences; (d) are still unable to either return to their previous homes or secure adequate alternative permanent housing; and (e) have reasonably relied, in making long-term housing plans, on the expectation that FEMA would continue to support them with the TSA program until they can either return to their homes or find other sustainable permanent housing.

75. While receiving federal assistance from FEMA, most TSA evacuees are ineligible for local benefits and housing assistance. If TSA assistance to these hurricane victims is revoked, they will become homeless.

76. TSA evacuees have no other housing options open to them. They do not have family members with whom they can stay, and they cannot return to Puerto Rico because there are no housing options for them. Most have lost their jobs and have no source of employment to go back to. In addition, many, including Plaintiffs, left Puerto Rico to seek healthcare for conditions they had that became aggravated as a result of lack of proper medical attention in Puerto Rico after the hurricane, and others have developed serious conditions or illnesses since their arrival. They need to remain in their current location, where they can continue to receive treatment and care for illnesses that include cancer, hypertension, diabetes and asthma.

77. If the remaining TSA evacuees are evicted without the requested relief, and no local or state government programs are immediately put in place to secure stable housing for them, they will become homeless and suffer irreparable injury.

78. Upon information and belief, Plaintiffs and putative class members have been actively working to secure permanent or longer-term housing. They continue to do so.

79. There are several ways in which FEMA can ensure that evacuees whose TSA is terminated are not left homeless.

80. FEMA has the ability to enter into an Inter-Agency Agreement (IAA) with the Department of Housing and Urban Development (HUD) to initiate the Disaster Housing Assistance Program (DHAP), as they did after Hurricane Katrina and Hurricane Sandy. FEMA has represented that “DHAP is not necessary to house displaced disaster survivors” because “FEMA collaborates directly with HUD to find housing solutions for disaster survivors and is providing a variety of housing programs to adequately meet the unique needs of survivors that are more timely and effective than DHAP.”⁷ FEMA has not kept this promise.

81. FEMA also has the ability to extend Direct Rental Assistance to all of the TSA evacuees in order to help them secure longer-term housing options, including apartment leases that would allow them to contract housing for longer periods of time. As of now, and upon information and belief, this program has been extended to remarkably few TSA evacuees. Some evacuees have applied for THA, but have not received it.

82. FEMA unlawfully set the final TSA deadline for June 30, 2018, without a plan for transitioning into longer-term or long-term housing some 2,000

⁷ FEMA Media Library (May 3, 2018), available at <https://www.fema.gov/media-library/assets/images/163928>.

individuals who have faced severe trauma and who have lost most, if not all, of their belongings, their homes, and their jobs and who face healthcare challenges. Before FEMA's planned eviction of TSA evacuees on June 30, 2018, some hotels received notification that FEMA would no longer pay for Plaintiffs and all TSA evacuees' stays. Some hotels then sent notices to evacuees that they would be responsible for payment as of July 1, 2018. For some evacuees, this was the only notice of benefits termination that they received. TSA evacuees and Plaintiffs are terrified at the possibility of being evicted with no alternative housing options available.

83. This litigation seeks to stop the eviction of TSA evacuees from their hotels without any alternative housing.

F. LIKE ITS INITIAL RESPONSE TO MARIA, FEMA'S PROVISION OF TSA TO MARIA SURVIVORS HAS BEEN INEQUITABLY BELOW TSA LEVELS AFTER IRMA AND HARVEY.

84. The amount and timing of TSA in response to Hurricane Maria has been unequal and discriminatory in comparison to other U.S. hurricanes.

85. FEMA has provided TSA assistance to victims of Hurricane Maria for only nine months. However, after Hurricanes Katrina and Rita, FEMA extended temporary housing assistance, which would have included TSA, for up to 26

months for evacuees.⁸ After that, FEMA provided additional transitional housing assistance to the victims of Hurricanes Katrina and Rita through DHAP. FEMA has arbitrarily and capriciously decided not to extend those same benefits to Plaintiffs and the putative class. Such conduct is also unequal and discriminatory in violation of law.

86. From the outset, FEMA's review of applications for individual assistance after Maria appeared motivated by discriminatory intent. FEMA grant denials in Puerto Rico were nearly double the number of denials for individual assistance in Texas after Harvey.

87. Hurricane Harvey destroyed far fewer homes in Texas than Hurricane Maria 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/media-library/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.)

⁸ <https://www.fema.gov/news-release/2009/04/07/fema-temporary-housing-program-ending-families-hurricanes-katrina-and-rita>.

88. FEMA also provided TSA for a longer period of time to Harvey evacuees than to Maria evacuees despite significant preexisting infrastructural and socioeconomic inequalities that make recovery in Puerto Rico substantially more difficult. FEMA extended TSA to Harvey evacuees seven times (compared to the three extensions it granted to Maria survivors). And, although FEMA planned to terminate TSA for the survivors of both hurricanes on the same day, June 30, 2018, FEMA initiated TSA to Texans two months before it launched the program for Puerto Rican evacuees. FEMA's unequal and discriminatory treatment of Puerto Rico and its residents occurred before, during and after the hurricane.

89. There is one other key distinction between Puerto Rican and Texan survivors of the respective hurricanes—Puerto Rican survivors still have no place to go once FEMA kicks them out of TSA-participating hotels. FEMA's arbitrary June 30, 2018, termination of TSA benefits was directly aimed at (or targeted) those individuals who have virtually no resources, economic or otherwise. If evicted without the requested relief, as FEMA has stated its intent to do, Plaintiffs and the putative class would suffer irreparable injury.

G. DEFENDANTS' CONDUCT HAS AND WILL PROXIMATELY CAUSE IRREPARABLE HARM TO PLAINTIFFS, CLASS MEMBERS AND THE PUBLIC.

90. Defendants' wrongful conduct has caused and will continue to cause Plaintiffs and class members irreparable harm and injury in that, absent judicial

relief, they will be wrongfully denied and delayed essential housing assistance that is necessary for their health and welfare.

91. Without that housing assistance, Plaintiffs, class members, and their families will be unable to remain continuously in affordable housing and will face the threat of probable homelessness.

92. Before their evacuation from the island and relocation to TSA housing, many Plaintiffs, class members and their families were forced to live in intolerable, unsafe and unsanitary conditions as a result of Hurricane Maria and inadequate disaster relief, which has caused *new* medical conditions and complicated existing medical conditions. Without the requested relief, many others will also be forced to live in those same intolerable, unsafe and unsanitary conditions.

93. Many Plaintiffs, class members and their families, have been displaced and evacuated to distant places around the country, often by FEMA, and left without housing assistance and the means to return to their communities.

94. The lack of housing assistance for Plaintiffs, class members and their families has also served to split families and tear households apart.

95. Defendants' knowing and continued failure and refusal to provide housing assistance to thousands of individuals and families, who will be evicted from their current TSA shelters, is causing, and will likely continue to cause,

further destitution, homelessness, hunger and stress. As a consequence, the risk of illness will be increased and their lives will be endangered.

96. Defendants' intentional and wrongful conduct will also result in significant costs to the public and waste of taxpayer funds. The loss of critically needed housing assistance harms those communities which have been destroyed by Hurricane Maria. The loss of housing assistance will harm many other communities throughout the country which have reached out to assist those who have been displaced and evacuated and now will face increased homelessness and, consequently, a higher incidence of persons with mental and emotional distress, illness, diseases and substance abuse.

97. As a result of the federal government's failure to fulfill its mandatory duties, misconduct, state and local governments will be required to expend significant additional funds for the increased use of county health facilities to remedy these increased problems.

H. PLAINTIFFS AND CLASS MEMBERS HAVE NO ADEQUATE REMEDY AT LAW.

98. Plaintiffs, class members and their families are without a plain, speedy or adequate remedy at law, rendering injunctive relief appropriate in that (a) damages cannot adequately compensate Plaintiffs and the class for their injuries; (b) damages for the harm inflicted upon Plaintiffs and the class are difficult to

ascertain; and (c) if the conduct complained of is not enjoined, a multiplicity of suits will result in that FEMA's unlawful conduct is continuous and ongoing.

VI.

CLAIMS FOR RELIEF

**COUNT I:
DEPRIVATION OF DUE PROCESS
U.S. Const. Amend. V**

(Defendants' Conduct, Including Termination Of The TSA Program, Violates Plaintiffs And Class Members' Substantive And Procedural Due Process Rights.)

99. All prior paragraphs are incorporated as if fully set forth herein.

100. The Fifth Amendment to the United State Constitution provides that no person shall "be deprived of life, liberty, or property, without due process of law[.]"

101. Plaintiffs and the class are entitled to the protections of the Fifth Amendment.

102. The Due Process Clause has a substantive component that provides heightened protection against government interference with fundamental rights and liberty interests. The right to property, shelter and peaceful possession of one's home are such fundamental rights and liberty interests. Violation of such rights by a government entity gives rise to a private right of action to redress such rights through declaratory, injunctive or other relief.

103. Plaintiffs and similarly situated members of the class, also have property interests, including a right to retain possession, as current tenants in possession of FEMA subsidized hotel/motel units, which have become their only homes. Plaintiffs have the right to continuing and orderly housing assistance, and as eligible disaster victims, they may qualify to receive alternative THA. They also have a fundamental right to shelter and peaceful possession of their homes. Defendants' intentional conduct knowingly impinges on these rights.

104. Defendants' termination of TSA without an adequate housing alternative is not necessary to achieve a compelling state interest; nor is it reasonably tailored to address that interest.

105. The Due Process Clause of the Fifth Amendment to the United States Constitution also has a procedural component, prohibiting Defendants from depriving Plaintiffs and similarly situated members of the class of their property interests without adequate and timely notice of the type(s) of THA for which they qualify or may qualify and appropriate procedures for determining their eligibility for and obtaining such assistance prior to FEMA's termination of the TSA Program.

106. FEMA has failed to provide Plaintiffs and similarly situated members of the class, prior to terminating the TSA Program, with proper notice, information

and procedures for determining their eligibility or continuing eligibility for THA, including the programs mentioned above, so that continuing assistance is assured.

107. FEMA's failure to provide Plaintiffs and similarly situated members of the class, prior to terminating the TSA Program, with proper information and procedures (in a manner and language that Plaintiffs and TSA evacuees can understand) regarding eligibility for alternative and continuing THA prevents or frustrates Plaintiffs and similarly situated members of their class in obtaining alternative THA, resulting in homelessness and inadequate housing.

108. This amounts to a deprivation of a property interest without adequate notice and other due process.

109. As a result, Defendants have violated the rights of Plaintiffs and similarly situated members of the class under Due Process of law as guaranteed by the Fifth Amendment to the United States Constitution.

110. Plaintiffs are entitled to a judicial declaration that (a) Plaintiffs have a right to stay in possession of their current shelter; and (b) Defendants' termination of the TSA Program as described above violates Plaintiffs' and class members' constitutional rights. Plaintiffs are further entitled to injunctive relief restraining and/or enjoining Defendants from terminating TSA without the process prayed for below and an adequate housing alternative.

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**COUNT II:
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
5 U.S.C. § 706(2)(B)
(Defendants' Conduct Should Be Declared Unlawful And/Or Set Aside
Because It Is Contrary To Constitutional Right, Power, Privilege, Or
Immunity.)**

111. All prior paragraphs are incorporated as if fully set forth herein.

112. The APA empowers the Court to “hold unlawful and set aside agency action, findings, and conclusions” that are “contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B). In addition, this Court has authority under 28 U.S.C. § 1331 and its traditional powers of equity to declare invalid and enjoin agency action that violates the Constitution.

113. Where a Complaint contends that agency action offends the Constitution, and for that reason should be enjoined, the Court does not afford deference to the agency, but instead reviews the constitutional issues independently.

114. As detailed above, Defendants' conduct violates Plaintiffs' substantive and procedural due process rights, including, without limitation, by depriving Plaintiffs of their fundamental right to shelter and peaceful possession of their homes; and doing so without constitutional safeguards, including, without limitation, proper notice and an opportunity to be heard.

115. Plaintiffs are entitled to a declaratory judgment that Defendants' termination of the TSA Program is unlawful and should be set aside.

**COUNT III:
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
5 U.S.C. § 706(2)(A)
(Defendants' Conduct Should Be Declared Unlawful And/Or Set Aside
Because It Is Arbitrary, Capricious, An Abuse Of Discretion, Or Otherwise
Not In Accordance With Law.)**

116. All prior paragraphs are incorporated as if fully set forth herein.

117. The APA requires courts to “hold unlawful and set aside” agency action that is, among other things, “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Agency action is arbitrary and capricious if it is not the product of reasoned decision making. This means, among other things, that an agency must provide an adequate evidentiary basis for its action and consider all important aspects of the problem before it.

118. Defendants’ decision to terminate the TSA Program on June 30, 2018, long before Puerto Rico has recovered from Hurricane Maria, and before TSA evacuees are able to apply for and secure THA, or alternative housing, was made without any plan to assist TSA evacuees in securing housing. This decision was without reason and is arbitrary and capricious.

119. Defendants’ decision to terminate the TSA on June 30, 2018, violated the APA’s prohibition against “arbitrary and capricious” agency action. FEMA’s stated purpose for terminating this support for the class members was that the agency did not think DHAP is needed. This was contrary to the stark facts and the reality faced by the Puerto Rican victims of Hurricane Maria who still rely on

FEMA assistance to survive and avoid homelessness. The stated purpose of terminating the program was not borne out by the facts, and was pretext for other unstated and ulterior purposes. FEMA decision to terminate the TSA program upon expiry of the TRO is also arbitrary and capricious.

120. FEMA has given inadequate consideration, if any, to the viability of possible alternatives for TSA evacuees, including Direct Rental Assistance, upon termination of their short-term housing benefits.

121. Plaintiffs and class members have suffered a legal wrong. Defendants' violation has caused and will continue to cause ongoing, irreparable harm to Plaintiffs and class members who have been adversely affected and aggrieved by FEMA's arbitrary and capricious conduct.

122. An actual controversy exists between Plaintiffs and Defendants regarding whether Defendants' termination of the TSA Program violates Section 706(2)(A) of the APA.

123. Plaintiffs are entitled to a judicial declaration that Defendants' termination of the TSA Program as described above is unlawful and should be set aside.

**COUNT IV:
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
5 U.S.C. § 706(1)
(Defendants Should Be Compelled To Provide The Relief They Have
Unlawfully Withheld Or Unreasonably Delayed.)**

124. All prior paragraphs are incorporated as if fully set forth herein.

125. The APA also requires courts to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(2)(A). As detailed above, Defendants have arbitrarily and capriciously decided to terminate benefits to TSA evacuees without any plan in place to transition them into longer-term housing.

126. Defendants’ refusal to activate DHAP or other relief (as they are obligated to do) before terminating benefits under the Transitional Shelter Assistance Program constitutes an unlawful withholding and/or an unreasonable delay of agency action—particularly in light of FEMA’s concurrent decision to evict Plaintiffs and class members from their homes.

127. FEMA has elected to evict Plaintiffs, class members and their families from their temporary homes, while simultaneously withholding benefits that FEMA has historically provided in similar situations, including after Hurricanes Katrina and Rita, to ensure that the termination of TSA does not result in homelessness or worse.

128. Plaintiffs are entitled to a permanent injunction restraining and/or enjoining Defendants from terminating TSA until Plaintiffs and class members have received sufficient THA to transition to longer-term housing; or Defendants implement an adequate replacement solution. Plaintiffs are further entitled to a permanent injunction compelling Defendants to accept and process all applications

for THA from TSA evacuees for a reasonable period of time, and to notify applicants and class members concerning all forms of THA available to them and the criteria and conditions applicable to such assistance.

COUNT V:
DECLARATORY JUDGMENT
28 U.S.C. § 2201

129. All prior paragraphs are incorporated as if fully set forth herein.

130. The Declaratory Judgment Act, 28 U.S.C. Section 2201, allows the Court to “declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

131. Plaintiffs are entitled to a declaration of their rights. Plaintiffs have a property interest in their current temporary shelter and are entitled to additional housing assistance under the Stafford Act.

132. Plaintiffs are further entitled to a declaration that (a) Defendants’ termination of the TSA Program as described above constitutes agency action that is unlawful and should be set aside under the Administrative Procedure Act; and that violates Plaintiffs and Class Members’ constitutional rights; (b) Defendants have unlawfully withheld and unreasonably delayed activation of any assistance or program to replace TSA; and (c) Defendants have unlawfully discriminated in disaster assistance.

COUNT VI:
EQUAL PROTECTION
U.S. Const. Amend. V
(Defendants Conduct Has Denied And Continues To Deny TSA Evacuees
Equal Protection Under The Law.)

133. All prior paragraphs are incorporated as if fully set forth herein.

134. The Due Process Clause of the Fifth Amendment to the U.S.

Constitution also contains an equal protection component that prohibits the federal government from denying equal protection of the law.

135. Plaintiffs and the class are entitled to the protections of the Fifth Amendment.

136. Defendants' conduct towards Plaintiffs and the class constitutes discrimination on the basis of race, national origin and kind of American citizenship, all suspect classifications. FEMA has provided a lesser level of housing assistance to Plaintiffs and the class because they are Puerto Rican.

137. Defendants were substantially motivated by an intent to discriminate against Puerto Ricans on each of the foregoing bases.

138. FEMA's policies have also had a disparate impact on Plaintiffs and the class in further violation of the equal protection component of the Due Process Clause.

139. Defendants' termination of TSA without an adequate housing alternative in place for Plaintiffs and the class is not necessary to achieve a compelling state interest; nor is it reasonably tailored to address that interest.

COUNT VI:
DISCRIMINATION IN DISASTER ASSISTANCE
28 U.S.C. § 5151(a); 44 C.F.R. § 7.3

140. All prior paragraphs are incorporated as if fully set forth herein.

141. The Stafford Act provides that disaster "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."

142. FEMA regulations provide that no person shall be excluded from or denied benefits or otherwise be subjected to discrimination on the ground of race color or national origin. 44 C.F.R. § 7.3

143. Defendants' conduct towards Plaintiffs and the class constitutes discrimination on the basis of race, color, nationality, English proficiency and economic status. FEMA has provided a lesser level of housing assistance to Plaintiffs and the class because they are Puerto Rican.

144. Defendants were also substantially motivated by an intent to discriminate against Puerto Ricans on each of the foregoing bases.

145. FEMA's arbitrary actions have not only discriminated against victims of Maria based on the basis of economic status prohibited by the Stafford Act, but they have also violated the intent of Congress in providing disaster aid to assure continuing means of assistance to alleviate the suffering of those most affected by Hurricane Maria.

146. FEMA's policies have also had a disparate impact on Plaintiffs and the class in further violation of the Stafford Act's nondiscrimination provision.

VII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and Class Members respectfully request that this this Court:

- A. Issue a declaratory judgment that (1) Plaintiffs have a right to retain possession of their current shelter and are entitled to additional assistance under the Stafford Act; (2) Defendants' termination of the Transitional Shelter Assistance Program as described above (a) constitutes agency action that is unlawful and should be set aside under the Administrative Procedure Act; and (b) violates Plaintiffs and Class Members' constitutional rights; and (3) Defendants have unlawfully withheld and unreasonably delayed activation of any Temporary Housing Assistance or program to replace the Transitional

Shelter Assistance Program;

- B. Issue a preliminary injunction restraining and/or enjoining Defendants from terminating the Transitional Shelter Assistance Program pending the outcome of this litigation;
- C. Issue a permanent injunction restraining and/or enjoining Defendants from terminating the Transitional Shelter Assistance Program until either (1) Plaintiffs and Class Members have received sufficient Temporary Housing Assistance to transition to longer-term housing; or (2) Defendants implement a long-term replacement solution such as DHAP or other program that ensures continuing assistance to evacuees;
- D. Issue a permanent injunction requiring Defendants to: (1) continue to accept and process all applications for THA from TSA evacuees by telephone and online for a reasonable period of time following issuance of injunctive relief to enable appropriate application by the class of people unlawfully excluded or discouraged from applying for THA; and (2) notify applicants and class members concerning all forms of temporary assistance available to them and the criteria and conditions applicable to such assistance; and
- E. Award such further relief as the Court deems appropriate.

Dated: July 12, 2018

Respectfully submitted,

By: /s/ Justin Jones Rodriguez

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CERTIFICATE OF SERVICE

I, Justin Jones Rodriguez, certify that the within document, filed this 12th of July, 2018, via the Court's electronic filing system, has thereby been served on all registered participants, and there are no unregistered participants.

/s/: Justin Jones Rodriguez
Justin Jones Rodriguez

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