

**National Commission on Fair Housing and Equal Opportunity  
Houston Regional Hearing**

**Written Testimony of  
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July 31, 2008**

Forty years ago, the Civil Rights movement successfully garnered national support for the Fair Housing Act, which was intended to eradicate housing discrimination and provide all Americans with an equal opportunity for housing. As we celebrate the anniversary of the Fair Housing Act and all of its accomplishments, we must also take stock of our unfinished business. While we have made great strides at opening up opportunities for people of color to live in neighborhoods which were once off limits to them through litigation and advocacy targeting the private housing market, the federal government continues to fail to fulfill its obligations. Specifically, in the area of public and assisted housing, the federal government has turned its back on poor people of color and is destroying their communities.

In urban areas throughout the U.S., the federal government has implemented a program to privatize public housing, in the name of integration. Guaranteeing fair housing through demolition and newly constructed mixed-income neighborhoods, the federal government has paved the way for mass displacement of poor communities of color, particularly African Americans. While there is little evidence that these displaced families make integrative moves with the vouchers they receive to make their displacement possible, there is evidence that whole communities are being destroyed and homelessness increases as a result. Further, as the buildings are torn down, intricate social networks and rich community ties are dismantled. As the mixed-income units come online, residents of public housing find themselves locked out of their homes and communities. Meanwhile, the prime real estate these families inhabited become home to more affluent residents, who are often white. This national trend is no different from the Negro Removal plans that cities implemented in the 1950's – 1970s. Then the justification was urban renewal, today it is urban renewal and integration; yet, the impact on people of color is the same – displacement and denial of housing opportunities. Viewing fair housing through the lens of public housing, it is clear that forty years later, fair housing for all remains out of reach. To move closer to securing fair housing, we must assess what went wrong. And there is no better place to start than in New Orleans.

On August 29, 2005, the 5,146 families living in New Orleans public housing<sup>1</sup> were ordered to evacuate the city in the immediate wake of Hurricane Katrina. Like the other predominately vulnerable evacuees – elderly, children, and disabled – they took with them only what they could carry and were stranded for days before government

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<sup>1</sup>There were an additional 2,000 units that the Housing Authority of New Orleans (HANO) kept vacant, despite having a waiting list of more than 8,000 families, who had applied but did not yet receive public housing, and despite the fact that many families were not even able to get placed on the waiting list. See *HANO Annual PHA Plan for Fiscal Year 2004*, at 8, available at <http://www.hud.gov/offices/pih/pha/approved/pdf/03/la001v01.pdf>.

assistance found its way to them. Like thousands of other evacuees, public housing residents expected to return when the mandatory evacuation order was lifted six weeks later. The basis for their expectation was eminently reasonable: Most of their homes sustained little or no damage. Nearly three years later, most of these families are still waiting to come home. However, the government demolished most of the public housing, which has significantly impacted these families' chances of returning to New Orleans in the near future, or ever.

In the face of a monumental affordable housing crisis and indescribable human suffering, the U.S. Department of Housing and Urban Development (HUD) responded with barbed wire and bulldozers. Rather than fulfilling Congress' mandate to preserve New Orleans public housing to the extent possible and to use federal funds to re-open undamaged or minimally damaged units immediately, HUD swiftly boarded up the units and prepared for what would be a historic razing.

Hurricane Katrina has forced us to confront the structural racism that preexisted the storm in New Orleans. The devastation mirrored long-standing disparities in neighborhood investments that disadvantaged African-American and poor communities.<sup>2</sup> We also cannot ignore the role that race has played in the federal government's deficient response to Hurricane Katrina. Race was clearly a motivating factor in the decisions made about New Orleans public housing post-Katrina. Prior to Katrina, public housing in New Orleans was 100 percent African American. Congressman Richard Baker (R-LA) all but applauded the storm, stating that "[w]e finally cleaned up public housing in New Orleans. We couldn't do it, but God did."<sup>3</sup> On the one-month anniversary of the storm, HUD Secretary Alphonso Jackson wrote the script for what was to come when he stated that New Orleans "is not going to be as black as it was for a long time, if ever again."<sup>4</sup> True to Secretary Jackson's word, HUD, the agency that is charged with increasing access to affordable housing that is free from discrimination, executed a plan to decrease substantially the availability of affordable housing at the expense of African-American public housing residents. By effectively excluding low-income African-American families from post-Katrina New Orleans, HUD, the agency in charge of enforcing fair housing, violated the Fair Housing Act.<sup>5</sup>

Low-income African-American families were being pushed out of New Orleans prior to August 2005. During the ten years prior to the storm, the government had decreased its public housing stock by more than 7,000 units. For those in power, both at the local and federal level, the tragedy of Katrina was seen as an opportunity to expedite the elimination of New Orleans public housing and displacement of poor African Americans.

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<sup>2</sup> See John Logan, *The Impact of Katrina: Race and Class in Storm-Damaged Neighborhoods*, Brown University at 14, available at <http://www.s4.brown.edu/Katrina/report.pdf>.

<sup>3</sup> Charles Babington, *Some GOP Legislators Hit Jarring Notes in Addressing Katrina*, THE WASHINGTON POST (Sept. 10, 2005), at A04, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/09/AR2005090901930.html>.

<sup>4</sup> Lori Rodriguez, et al., *New Orleans' Racial Making in the Air: Some Black Areas May Not be Rebuilt* HUD Chief Says, HOUSTON CHRONICLE (Sept. 29, 2005) at B1, available at <http://www.chron.com/disp/story.mpl/front/3374480.html>.

<sup>5</sup> Exhibit A, Judith A. Browne-Dianis and Anita Sinha, *Exiling the Poor: The Clash of Redevelopment and Fair Housing in Post-Katrina New Orleans*, 51 How. L.J. 3, 481, 493 (2008).

Although Hurricane Katrina accelerated the pace of the destruction of public housing, the dismantling of public housing is not unique to New Orleans. Across the country, public housing is on the attack. Affordable housing is razed in the name of progress, but the critical question is progress for whom? The wholesale demolition of public housing has destroyed low-income African-American communities and families. Despite promises from the government that residents will be able to return to the redeveloped mixed-income developments, demolitions under HOPE VI, for example, have resulted in the loss of tens of thousands of public housing units, with less than a third of public housing residents having returned to the redeveloped sites.<sup>6</sup> And it is not just the buildings that are destroyed when public housing developments are demolished—close-knit communities are also shattered. Moreover, the rental vouchers that displaced residents receive tend to be ineffective where, as in many urban areas, the demand for affordable housing outpaces the supply and discrimination in the rental market persists. The 40<sup>th</sup> anniversary of the Fair Housing Act presents an apt opportunity to end HUD's policy of bulldozers and broken promises and reinvest in public and other subsidized housing.

### **HUD's Response to Hurricane Katrina in New Orleans**

In the immediate aftermath of Hurricane Katrina, HUD promised to help get public housing residents home quickly. In its initial assessment after the hurricane, the Housing Authority of New Orleans (HANO), whose recovery and redevelopment plan was directed by a HUD receivership team, determined that most developments had units that could be reopened with some work.

Over the next few months, however, HUD's position shifted. HANO fenced off the public housing developments and residents' repeated inquiries about the status of their units went unanswered. We would later learn that the silence was based on a set of redevelopment plans that focused on the value of real estate rather than bringing people back home. In April 2006, HUD characterized one of the developments, C.J. Peete, which had sustained minimal interior damage and little overall damage, as "a prime location for retail and residential development."<sup>7</sup> Redevelopment plans for the Tremé District, a historically African-American neighborhood, were revealed to include a \$130-million movie studio on land abutting the Lafitte public housing development. Plans were made for an 18-hole golf course on the site of yet another public housing development, St. Bernard.<sup>8</sup>

On June 14, 2006, the federal government's plan became clear. Secretary Jackson announced a plan to demolish four of New Orleans' largest public housing

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<sup>6</sup> Xavier de Souza Briggs and Peter Dreier, *Memphis Murder Mystery? No, Just Mistaken Identity*, Shelterforce (July 22, 2008), available at: <http://www.shelterforce.org/article/special/1043/>. See also *False HOPE: A Critical Assessment of the HOPE VI Public Housing Redevelopment Program*, National Housing Law Project (June 2002), available at: <http://www.nhlp.org/html/pubhsg/FalseHOPE.pdf>. (Stating that public housing demolitions pursuant to HOPE VI have resulted in the loss of tens of thousands of public housing units, with only 11.4 percent of former public housing residents returning or expecting to return to the redeveloped sites)

<sup>7</sup> **Exhibit B**, *HANO Preliminary Recovery Plan, C.J. Peete Housing Development* (April 24, 2006)

<sup>8</sup> Coleman Warner, *New Orleans proposal links St. Bernard and City Park*, THE TIMES-PICAYUNE (November 11, 2007), available at <http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-9/119476299018110.xml&coll=1>.

developments containing more than 5,000 units—C.J. Peete, B.W. Cooper, Lafitte, and St. Bernard—and replace them with mixed-income housing developments with far fewer public housing units. In response to the tragedy of Katrina, HUD is executing the largest demolition in the New Orleans' history,<sup>9</sup> destroying more than 70 percent of the city's public housing stock, and ensuring that thousands of poor African-American families will be unable to return home and participate in the redevelopment of their city. In response to HUD's announcement, Advancement Project, along with Bill Quigley of Loyola Law School, Tracie Washington, and the law firm of Jenner & Block, LLP, filed a federal class action lawsuit, *Anderson v. Jackson*,<sup>10</sup> on behalf of displaced public housing residents to secure their right to return. *Anderson* is currently before a federal appellate court. In the meantime, however, HUD has proceeded with its plan to demolish the bulk of public housing.

The lawsuit revealed that the demolition of New Orleans public housing was not about damage caused by Katrina. An architecture expert from MIT determined that there was no structural or nonstructural damage that would reasonably warrant destroying the buildings.<sup>11</sup> Moreover, documents obtained from HANO indicate that HUD and HANO misled the public to justify their plans. William Thorson, a HUD employee appointed to run the day-to-day operations of HANO, recommended that HANO staff "tak[e] photos of the worst of the worst," and check for the presence of lead apparently not to evaluate safety, but to justify its demolition plans even though "the per unit cost of repair is relatively low."<sup>12</sup> Thorson also directed HANO staff to use scare tactics by highlighting news articles about murders at developments that were not slated for demolition.<sup>13</sup>

HUD's plan was neither about the habitability of the buildings nor the cost of repairs. The demolition of New Orleans public housing was about race, class and real estate. Within days of Hurricane Katrina, prominent New Orleans business leaders invited Mayor C. Ray Nagin to a meeting to plan for New Orleans' future. James Reiss, an influential business leader and chairman of the city's Regional Transit Authority, reportedly stated that the city needed better services and fewer poor people.<sup>14</sup> Former New Orleans City Council President Oliver Thomas stated that New Orleans did not need "soap opera watchers" to return to the city and acknowledged that he was

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<sup>9</sup>Susan Saulny, *5,000 Public Housing Units in New Orleans Are to Be Razed*, THE NEW YORK TIMES (June 15, 2006), available at <http://www.nytimes.com/2006/06/15/us/15housing.html?ex=1308024000&en=7e1599e4112fed5d&ei=5088&partner=rssnyt&>.

<sup>10</sup> **Exhibit C**, *Anderson v. Jackson*, Class Action Complaint for Declaratory Relief, Injunctive Relief, and Damages.

<sup>11</sup> **Exhibit D**, Declaration of John Fernandez.

<sup>12</sup> **Exhibit E**, Email from William C. Thorson to Jeffrey Riddel, copied to Dominique G. Blom, C. Donald Babers, and Justin Ormsby, re: working draft of talking points (Aug. 4, 2006).

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

<sup>14</sup> Christopher Cooper, *Old Line Families Escape Worst of Flood and Plot the Future*, THE WALL STREET JOURNAL (Sept. 8, 2005) (quoting Reiss as stating "Those who want to see this city rebuilt want to see it done in a completely different way: demographically, geographically and politically. I'm not speaking for myself here. The way we've been living is not going to happen again, or we're out."), available at [www.online.wsj.com](http://www.online.wsj.com).

addressing African Americans.<sup>15</sup> The plan to rebuild a better New Orleans meant a whiter, richer New Orleans, and the elimination of public housing was a major step in bringing that plan to fruition.

### **Downsizing Public Housing In The Face Of Ongoing Need**

The demolitions are especially egregious in light of New Orleans' shrinking affordable housing stock and the subsequent rise in rent and homelessness. Of the city's 142,000 units that were damaged or lost due to Hurricane Katrina, 112,000 – or 79 percent – were affordable to low-income families.<sup>16</sup> According to a June 2007 report by *PolicyLink*, Louisiana's plan for repairing rental homes damaged or destroyed will replace only two-fifths of this housing.<sup>17</sup> Due to the sharp decline in supply, post-Katrina rental rates have been at least 40 percent higher than pre-storm rates<sup>18</sup> and the number of homeless in New Orleans has doubled since the storm to approximately 12,000.<sup>19</sup> Three years before Hurricane Katrina, HUD recognized that "the need for additional public and affordable housing in the New Orleans community is at crisis proportions."<sup>20</sup> This need has grown significantly since the storm.

Although Hurricane Katrina expedited the process, the plan to decrease the supply of public housing in New Orleans was in effect long before August 29, 2005. In 1996, there were more than 13,500 public housing units in New Orleans. At the time of Hurricane Katrina's landfall, there were only 5,146 families living in public housing,<sup>21</sup> all of whom were African American. Additionally, two thousand units were vacant and awaiting demolition (many for years) even though the demand for public housing greatly outstripped supply. More than 8,000 families were on the public housing waiting list, and many additional families were not even able to get placed on the waiting list at all.<sup>22</sup> When the waiting list for Section 8 vouchers was opened for a three-week period in

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<sup>15</sup> Thomas, who is Black, said "I'm saying these things to motivate my people." Eric Berger, *New Orleans Says it Won't Give Free Ride*, HOUSTON CHRONICLE (Feb. 22, 2006), available at <http://www.chron.com/disp/story.mpl/front/3676263.html>.

<sup>16</sup> NLIHC Estimates 71% of Units Lost in Gulf Coast Were Low Income, National Low Income Housing Coalition, available at [http://www.nlihc.org/detail/article.cfm?article\\_id=2670&id=48](http://www.nlihc.org/detail/article.cfm?article_id=2670&id=48); see also Deon Roberts, *Unaffordable Problem: N.O. Needs 30,000 Low-Income Rental Units*, New Orleans CityBusiness (Dec. 4, 2006), available at <http://www.neworleanscitybusiness.com/viewStory.cfm?recID=17465>. (Reporting that the Louisiana Hurricane Housing Task Force in December 2006 stated that there is an "urgent need" for 45,000 affordable rental units in Louisiana, 30,000 in New Orleans alone.)

<sup>17</sup> See PolicyLink, *Bringing Louisiana Renters Home: An Evaluation of the 2006-2007 Gulf Opportunity Zone Rental Housing Restoration Program*, available at [www.policylink.org/documents/LRHC.pdf](http://www.policylink.org/documents/LRHC.pdf).

<sup>18</sup> Amy Liu and Allison Plyer, *The New Orleans Index: A Review of Key Indicators of Recovery Two Years After Katrina* at 6, available at <http://www.gnocdc.org/NOLAIndex/ESNOLAIndexAug07.pdf>.

<sup>19</sup> Brad Heath, *Katrina's Wrath Lingers for New Orleans' Poor*, USA TODAY (Dec. 13, 2007), available at [http://www.usatoday.com/news/nation/2007-12-13-katrinapoor\\_N.htm](http://www.usatoday.com/news/nation/2007-12-13-katrinapoor_N.htm).

<sup>20</sup> HANO Annual PHA Plan for Fiscal Year 2003, at 6, available at <http://www.hud.gov/offices/pih/pha/approved/pdf/02/la001v03.pdf>.

<sup>21</sup> HANO Post-Katrina Frequently Asked Questions, available at <http://www.HANO.org/FAQ072006.pdf>.

<sup>22</sup> HANO Annual PHA Plan for Fiscal Year 2004, at 8, available at <http://www.hud.gov/offices/pih/pha/approved/pdf/03/la001v01.pdf>.

2001, HANO received 19,000 applications and then closed the list to new applicants.<sup>23</sup> In the years before the storm, there were more people on waiting lists for public housing and rental assistance than in public housing or receiving rental assistance. In 2000, St. Thomas, a public housing development that contained over 1500 units, was demolished under HOPE VI. The mixed-income development that replaced St. Thomas, River Gardens, contains less than 200 public housing units. Despite the long-standing need for affordable housing in the years preceding Hurricane Katrina, HUD and HANO continue to shrink the public housing stock, and in turn downsize the city's low-income African-American population.

In addition to HUD's discriminatory actions, local governments in the greater New Orleans area introduced ordinances specifically designed to inhibit the development of affordable housing<sup>24</sup> and limit access to existing properties on the basis of race.<sup>25</sup> St. Bernard Parish, for example, passed an ordinance requiring property owners to rent only to blood relatives, and because parish property is overwhelmingly owned by Whites, the law effectively prohibits African Americans from renting the property. The post-Katrina redevelopment plan clearly has not been about fixing the racial and economic inequities that existed before the storm or even returning to the level of affordable housing that existed when the storm hit. Rather, it has been about wiping out the infrastructure necessary for low-income African-American families to return home and communities to be restored, antithetical to the notion of fair housing.

### **HUD Has Violated the Fair Housing Act**

HUD, in conjunction with HANO, has violated the core purpose of the Fair Housing Act by limiting housing opportunities for African Americans. By reducing the number of units available to public housing families, all of whom are African-American, and failing to provide a concrete plan for creating housing opportunities for these families in New Orleans, HUD has inhibited low-income African-American families from returning and staying in post-Katrina New Orleans. HUD's plan for redeveloping public housing in New Orleans is, in fact, no different than the Negro Removal plans that cities implemented in the 1950's – 1970s, where African-American communities were removed in the name of revitalization.<sup>26</sup> Just as those revitalization plans were deemed unlawful, the government's plan for New Orleans public housing, which has had a discriminatory effect on African-American public housing residents, violates the Fair Housing Act.

HUD has defended its plan by stating that the demolition of public housing and creation of privately-owned, mixed-income developments will deconcentrate poverty and integrate housing, as mandated by the Fair Housing Act. But the fact that New Orleans public housing was comprised entirely of low-income African Americans does not mean that every effort to destroy it constitutes affirmatively furthering fair housing.

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<sup>23</sup> HANO Annual PHA Plan for Fiscal Year 2003, at 7, available at <http://www.hud.gov/offices/pih/pha/approved/pdf/02/la001v03.pdf>.

<sup>24</sup> Elected officials in both Orleans and Tammany Parishes promoted efforts to restrict construction or redevelopment of multi-family housing. See <http://www.knowledgeplex.org/news/76901.html>; see also [http://www.nola.com/newslogs/tpupdates/index.ssf?/mtlogs/nola\\_tupdates/archives/2006\\_11\\_27.html#208752](http://www.nola.com/newslogs/tpupdates/index.ssf?/mtlogs/nola_tupdates/archives/2006_11_27.html#208752).

<sup>25</sup> See <http://www.lawyerscomm.org/2005website/publications/press/press110206.html>.

<sup>26</sup> See e.g., *Garrett v. Hamtramck*, 503 F.2d 1236 (6th Cir. 1974).

Desegregation was never meant to be a proxy for restricting housing opportunities for African Americans in New Orleans or anywhere else.<sup>27</sup> The government has taken advantage of the Fair Housing Act's charge, using it as "as political cover for... massive reductions in the number of housing units subsidized for community's poorest residents... [and] massive reductions in poor African Americans in a post-Katrina New Orleans."<sup>28</sup>

HUD's desegregation justification cannot hide the fact that its plan in New Orleans and in cities across the country to drastically reduce the supply of affordable housing for African-American communities is unlawful under the Fair Housing Act. The reduction in the numbers of affordable units is irrefutable. Moreover, the allocation of housing vouchers in lieu of hard units does not satisfy HUD's obligations to ensure that public housing residents are provided with adequate housing opportunities. Pursuant to the U.S. Housing Act of 1937, HUD cannot approve a demolition/disposition application, unless the public housing authority (PHA), in this case HANO, ensures that each displaced resident is offered comparable housing.<sup>29</sup> Although the PHA may provide comparable housing through tenant-based vouchers, families must successfully use the vouchers to relocate into comparable housing before HUD can determine that the PHA satisfied its comparable housing mandate. In New Orleans, as in many cities across the country, housing vouchers have not translated into genuine housing opportunities for poor African-American renters due to the limited supply of available low-cost housing and discrimination in the marketplace.

Facing an occupancy rate of nearly 100 percent, New Orleans public housing residents have struggled to find available housing upon which to utilize vouchers. In the rare instance in which a vacancy exists, landlords often do not accept housing vouchers. On August 6, 2006, HANO itself stated that "[t]he unprecedented level of devastation wrought by Katrina has created a serious shortage of available housing throughout Orleans Parish. ... These conditions are adversely affecting the rental housing market and will drastically affect HANO clients' ability to return to the City of New Orleans."<sup>30</sup> For a snapshot assessment of housing available to voucher recipients, Advancement Project conducted a survey in partnership with Common Ground Collective last year. Of the 238 apartment complexes called, only five were immediately available to voucher recipients, of which one was exclusively for elderly renters. Approximately 16 apartments reported to accept vouchers but were not accepting recipients at the time – these apartments had waiting lists ranging from three months to two years; one apartment had 1,200 applicants on a waiting list; others reported that their waiting list was closed indefinitely. Given the limited supply of available housing, housing vouchers are not an adequate substitute for hard units.

Moreover, discrimination against African-American renters in remains rampant in the New Orleans housing market. A 2005 study entitled *No Home for the Holidays* reported that displaced African-American residents seeking housing encountered

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<sup>27</sup> See **Exhibit A** and Florence Wagman Roisman, *A Place to Call Home? Affordable Housing Issues in America*, Wake Forest L. Rev. 333, 343 (2007).

<sup>28</sup> Stacy E. Seicshnaydre, *The More Things Change, the More They Stay the Same: In Search of a Just Public Housing Policy Post Katrina*, 81 Tul. L. Rev. 1263(2007).

<sup>29</sup> 42 U.S.C. §1437p(a)(4)(C)(2007).

<sup>30</sup> **Exhibit F**, Housing Authority of New Orleans, Response to Congressional Follow-Up Questions (Aug. 5, 2006)

discrimination in 66% of their attempts to locate housing.<sup>31</sup> An audit of the New Orleans metro area rental market for housing discrimination based on race found discrimination against African Americans in 57.5% of transactions.<sup>32</sup> The presence of discrimination, combined with the dearth of affordable housing, creates “barriers to housing” that are “nearly insurmountable.”<sup>33</sup>

### **Broken Promises Across the Country**

The residents of New Orleans public housing were marginalized and neglected by HUD and HANO before Hurricane Katrina struck, and in the three years since the storm. This poor treatment subsequently provided the justification for destroying these communities. While Hurricane Katrina thrust New Orleans in the spotlight, the struggle to preserve and increase affordable housing opportunities is not unique to the Crescent City. In fact, what happened in New Orleans is a microcosm of what is happening across the country. The federal government and local governments are engaging in a massive removal of communities of color. In the name of integration and revitalization, communities of color are seeing their housing opportunities significantly restricted.

In Miami, for example, the Scott-Carver public housing developments, which housed 850 families in the predominantly African-American neighborhood of Liberty City, was demolished in 2001 pursuant to a HOPE VI grant.<sup>34</sup> The redevelopment plan called for a mixed-income development, containing 80 public housing units. Seven years later, the residents remain displaced. In 2007, 187 former Scott-Carver heads of households answered questionnaires concerning their relocation experiences.<sup>35</sup> An alarming 33 percent of the residents reported being homeless.<sup>36</sup> Approximately 52 percent of the residents that were initially relocated from Scott-Carver through the Section 8 voucher program subsequently lost their voucher.<sup>37</sup> The vast majority of these residents who lost their Section 8 voucher—76 percent—reported becoming homeless or moving in with family members.<sup>38</sup> Many residents reported that they lost their Section 8 voucher because they could not find an apartment fast enough or the apartments they found did not pass inspection.<sup>39</sup> Despite these problems, the waiting list for Section 8 vouchers in Miami-Dade is expected to grow to 100,000 families.

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<sup>31</sup> Testimony of James Perry, Executive Director, Greater New Orleans Fair Housing Action Center and President, Louisiana Housing Alliance on behalf of The National Low Income Housing Coalition, presented to the Committee on Banking, Housing, and Urban Affairs, at 8, available at <http://gnofairhousing.org/pdfs/09-25-07testimonycongress.pdf>.

<sup>32</sup> *Id.* at 7-8.

<sup>33</sup> **Exhibit G**, Andrew A. Beveridge, *The Impact on Low-Income African Americans of the Planned Demolition of Public Housing in New Orleans, Louisiana and the Redevelopment of the Sites* (June 13, 2007) at 12.

<sup>34</sup> Marcos Feldman, *How are the Displaced Scott-Carver Residents Faring? The Aftermath of HOPE VI Public Housing Redevelopment in Miami*, The Research Institute on Social and Economic Policy, Florida International University (February 2007), at 1, available at [http://www.risep-fiu.org/reports/Find\\_our\\_People.pdf](http://www.risep-fiu.org/reports/Find_our_People.pdf).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 7.



In Chicago, the country's largest redevelopment of public housing has resulted in the prolonged displacement of public housing residents, the vast majority of whom are African American.<sup>40</sup> The 10-year plan to transform public housing into mixed income developments is approaching its ninth year, but is only 30 percent complete.<sup>41</sup> In the meantime, there have been more than 56,000 families on the waiting list for public housing, which has been closed to new applicants since 2001.<sup>42</sup>

Right here in Houston, HOPE VI demolitions have decreased the public housing stock and the Houston Housing Authority has a waiting list of over 42,000 families for the public housing and voucher programs.<sup>43</sup> In 2005, there was a deficit of 108,000 units of low-income housing in the Greater Houston Area.<sup>44</sup> Less than one year ago, the Senior Vice President of the Houston Housing Authority testified before Congress about the "vast need for affordable housing."<sup>45</sup>

The demolition of public housing and general dearth of affordable housing has far-reaching implications for low-income African Americans that extend beyond fair housing. The demographic shift that occurs when people are displaced also impacts voting power. Once again, New Orleans is the perfect example. The unjust and unlawful housing policy implemented by the federal government post-Katrina has resulted in a significant reduction in the voting power of African Americans. In 2003, more than 84,000 African Americans in Orleans Parish voted in the gubernatorial election. In 2007, however, approximately 39,000 African-Americans voted in the gubernatorial election—a 54 percent reduction. African Americans in Orleans Parish made up 62 percent of all voters in 2003, but just 50.6 percent of all voters in 2007. White voters, however, went from 33 percent of the electorate in 2003 to nearly 45 percent in 2007. The decrease in African-American voting power has impacted several state and local elections since Katrina and will hinder low-income African American's ability to advocate for affordable housing opportunities.

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<sup>40</sup> As of September 2007, 19,187 of the 22,244 residents in Chicago's family public housing program—or 86 percent—are African American. *Appendices to Chicago Housing Authority's Plan for Transformation*, at 125, available at

[http://www.thecha.org/transformplan/files/12\\_Appendices\\_030108.pdf](http://www.thecha.org/transformplan/files/12_Appendices_030108.pdf).

<sup>41</sup> Jason Grotto, Laurie Cohen and Sara Olkon, *Public housing limbo*, THE CHICAGO TRIBUNE, (Dec. 13, 2007), available at <http://www.chicagotribune.com/news/nationworld/chi-cha-main-sunday-bd-06-jul06,0,2989588.story>.

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

<sup>43</sup> Statement of Horace Allison, Senior Vice President, Housing Authority of the City Of Houston, presented to the Subcomm. on Housing and Community Opportunity of the H. Comm. On Financial Services, 110th Cong., at 15 (October 29, 2007), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_house\\_hearings&docid=f:39914.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:39914.pdf).

<sup>44</sup> Statement of John Henneberger, Co-Director, Texas Low Income Housing Information Service, presented to the Subcomm. on Housing and Community Opportunity of the H. Comm. On Financial Services, 110th Cong., at 27 (October 29, 2007), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_house\\_hearings&docid=f:39914.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:39914.pdf).

<sup>45</sup> *Supra* note 43.

## **Investing In Public and Subsidized Housing**

Forty years after the passage of the Fair Housing Act, housing segregation and discrimination remain. There is no doubt that HUD and fair housing advocates must continue to work on addressing these problems. However, HUD must recognize that ensuring an adequate supply of housing and investing in housing for low-income communities of color are critical steps to ensuring fair housing. If HUD had understood fair housing to encompass these principals, the fate of New Orleans public housing would have been very different. Instead of habitable housing left boarded up and slated for demolition while a plan is devised to drastically reduce the number of public housing available in the city, units would have been re-opened, families would have returned from displacement, and social services and other community betterment initiatives would have been devised with the input and participation of public housing residents. HUD must also respect and appreciate the value of the social networks and close-knit ties that exist in poor communities of color as they do in other communities. If HUD had appreciated these communities, it never would have moved so swiftly to destroy them. Instead, HUD would have worked with the public housing residents to help them return to, restore, and improve their communities.

Given the nation-wide dearth of affordable housing and the persistence of discrimination, HUD must re-assess its mixed-income policy, a policy that focuses on real estate rather than helping the poor families of color it displaces. HUD must invest in, rather than tear down, public and subsidized housing, and must allow residents to be active participants in the redevelopment process. This is the only way to attain fair housing.

# **EXHIBIT A**

# Exiling the Poor: The Clash of Redevelopment and Fair Housing in Post-Katrina New Orleans

JUDITH BROWNE-DIANIS AND ANITA SINHA\*

## INTRODUCTION

"Katrina was a tragedy, but its aftermath presents the most exciting urban opportunity since San Francisco in 1906. Pioneers, please apply."<sup>1</sup>

Hurricane Katrina caused a crisis of a magnitude never before seen on U.S. soil. With thousands dead and hundreds of thousands displaced,<sup>2</sup> policymakers swiftly presented the tragedy as an opportunity for New Orleans. However, the critical inquiries are: an opportunity for whom?; and what is the government's responsibility to ensure that low-income residents are afforded a viable right to return?

Prior to Hurricane Katrina, New Orleans was a city mired in inequitable opportunities. The city had one of the highest levels of income inequality in the United States,<sup>3</sup> and the stark disparities in economic and social opportunities were demarcated along racial lines. According to a 2000 report, 88% of those living in subsidized housing

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1. James K. Glassman, *Back to the Future*, WALL ST. J., Jan. 12, 2006, available at <http://opinionjournal.com/cc/?id=110007798>.

2. Rebecca Eaton, *Escape Denied: The Gretna Bridge and the Government's Armed Blockade in the Wake of Katrina*, 13 TEX. WESLEYAN L. REV. 127, 128-29 (2006).

3. *Id.* at 132.

in New Orleans were African American,<sup>4</sup> and 56.5% of all African Americans were of very low income, compared to 30.9% of Whites.<sup>5</sup> The city's public infrastructure was in dire need of reform, as the schools, hospitals, and housing accessible to low-income residents – predominately people of color – were notoriously underperforming.<sup>6</sup>

Pre-Katrina New Orleans was a prime example of structural racism – how institutional mechanisms cause racial exclusion.<sup>7</sup> The consequence of this structural racism was exposed as the world watched the botched evacuation, relief, and recovery efforts. The television images confirmed what the post-Katrina studies found: the hurricane had “a substantial disproportionate impact on African Americans and people with fewer resources.”<sup>8</sup> There was a direct relationship between social stratification and hurricane evacuation, as “income-level, age, access to information, access to private transportation, physical mobility and health, . . . occupations[,] . . . and . . . social networks outside of the city” impacted evacuation strategies and subsequent experiences of displacement.<sup>9</sup> Furthermore, the devastation traced long-

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4. Andrew A. Beveridge, Ph.D., *The Impact on Low-Income African Americans of the Planned Demolition of Public Housing in New Orleans, Louisiana and the Redevelopment of the Sites*, June 13, 2007, at 7 (on file with authors).

5. *Id.* at 9.

6. NAOMI KLEIN, *THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM* 407-08 (2007).

7. See Peter Edelman, *Where Race Meets Class: The 21st Century Civil Rights Agenda*, 12 GEO. J. ON POVERTY L. & POL'Y 1, 1 (2005) (“[S]tructural racism . . . [is] the racially disparate outcomes that occur in schooling, employment, housing, the criminal justice system, and elsewhere, and that, among other things, exacerbate the disproportionate poverty experienced by people of color.”); Scott C. Idleman, *Multiculturalism and the Future of Tribal Sovereignty*, 35 COLUM. HUM. RTS. L. REV. 589, 595 (2004) (“[T]he notion of institutionally imbedded or structural racism . . . [is] the idea that seemingly neutral policies or practices, and even entire institutions or systems, might be designed in ways that naturally and effectively (though perhaps unintentionally) disadvantage certain groups.”); Penda D. Hair, *Louder Than Words: Lawyers, Communities and the Struggle for Justice*, at 9, n.3 (March 2001), available at <http://advancementproject.org/publications/community-lawyering.php> (“[S]tructural exclusion refers to subtle and overt forms of racial disadvantage and prejudice including market political and social mechanisms. . . .”); see also Andrew Grant-Thomas & John A. Powell, *Toward a Structural Racism Framework*, Poverty & Race Research Action Council (Nov./Dec. 2006), available at [http://www.prrac.org/full\\_text.php?text\\_id=1095&item\\_id=10188&newsletter\\_id=90&header=Symposium:%20Structural%20Racism](http://www.prrac.org/full_text.php?text_id=1095&item_id=10188&newsletter_id=90&header=Symposium:%20Structural%20Racism) (“[S]tructural racism . . . emphasizes the powerful impact of inter-institutional dynamics, institutional resource inequities, and historical legacies on racial inequalities today.”).

8. John Logan, *The Impact of Katrina: Race and Class in Storm-Damaged Neighborhoods*, BROWN UNIV., at 14, <http://www.s4.brown.edu/Katrina/report.pdf> (last visited Mar. 24, 2008); see also Sherrie Armstrong Tomlinson, *No New Orleanians Left Behind: An Examination of the Disparate Impact of Hurricane Katrina on Minorities*, 38 CONN. L. REV. 1153 (2006).

9. See Eaton, *supra* note 2, at 133 (quoting Elizabeth Fussell, *Leaving New Orleans: Social Stratification, Networks, and Hurricane Evacuation*, SOC. SCI. RES. COUNCIL, Sept. 26, 2005). When Katrina hit New Orleans, approximately 28% of the residents lived below the poverty level, almost 12% were over the age of 65, and about 27% had a car. *Id.* at 132. While the

standing disparities in neighborhood investments that disadvantaged Black and poor communities.<sup>10</sup> As a result, a staggering number of those displaced from Orleans Parish – approximately 272,000 people or 73% of all those displaced in the parish – were African American.<sup>11</sup>

The hurricane did in fact present an opportunity – a chance to create a city of equitable opportunity. But the redevelopment plans devised after Katrina have maintained the status quo and have cut off opportunities for thousands of families to return. Statements of the city's elite foreshadowed these plans. Within days of Hurricane Katrina, prominent New Orleans business leaders invited Mayor C. Ray Nagin to a meeting to plan for New Orleans' future. Among those leaders was James Reiss, an influential business leader and chairman of the city's Regional Transit Authority, who reportedly stated that New Orleans needed better services and fewer poor people. Reiss explained, "[t]hose who want to see this city rebuilt want to see it done in a completely different way: demographically, geographically and politically. I'm not just speaking for myself here. The way we've been living is not going to happen again, or we're out."<sup>12</sup>

Similar statements made by government officials followed. Congressman Richard Baker proclaimed, "[w]e finally cleaned up public housing in New Orleans. We couldn't do it, but God did."<sup>13</sup> Likewise, former New Orleans City Council President Oliver Thomas acknowledged that he was addressing African Americans when he said that New Orleans did not need "soap opera watchers" to return to the

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residents in the damaged areas were 75% Black and 29.2% poor, in the undamaged areas they were 46.2% Black and 24.7% poor. See Logan, *supra* note 8, at 7.

10. See Logan, *supra* note 8, at 14.

11. Letter from the Greater New Orleans Fair Housing Action Center to Ainars Rodins, Department of Housing and Urban Development, *RE: New Orleans Housing Authority's Applications for the Demolition or Disposition of Units in New Orleans*, Sept. 12, 2007 [hereinafter Letter to Ainars Rodins] (on file with authors).

12. Christopher Cooper, *Old Line Families Escape Worst of Flood and Plot the Future*, WALL ST. J., Sept. 8, 2005, available at <http://www.commondreams.org/headlines05/0908-09.htm>.

13. Charles Babington, *Some GOP Legislators Hit Jarring Notes in Addressing Katrina*, WASH. POST, Sept. 10, 2005, at A04. See also Eaton, *supra* note 2, at 136 (citing Barbara Bush, after touring the Houston Astrodome that temporarily housed thousands of Katrina evacuees, as stating "So many of the people here, you know, were underprivileged anyway, so this is working very well for them;" Former House Majority Leader Tom Delay, comparing temporary housing at the Astrodome to camp, as asking a group of boys, "Now tell me the truth, boys, is this kind of fun?"; Former Secretary of Education as admitting that post-Katrina New Orleans was on his mind when he said, "If you wanted to reduce crime . . . you could abort every [B]lack baby in this country and your crime rate would go down.").

city.<sup>14</sup> And the Secretary of the U.S. Department of Housing and Urban Development (HUD), who is charged with providing affordable housing to and promoting economic development for disadvantaged communities, stated that New Orleans “is not going to be as [B]lack as it was for a long time, if ever again.”<sup>15</sup>

Staying true to these statements, New Orleans’ post-Katrina redevelopment plans have effectively prohibited the return of low-income communities of color. From health care to education to housing, these families have found institutional barriers that prohibit their return. As of July 2007, four out of seven general hospitals remained closed, and the city had only two-thirds of its pre-Katrina hospital bed capacity.<sup>16</sup> After Hurricane Katrina, the government permanently closed Charity Hospital,<sup>17</sup> where prior to the hurricane nearly three-quarters of the patients were African American and 85% had income levels below \$20,000.<sup>18</sup> The education system has been dismantled since the hurricane, with most of the public schools replaced by charter schools with selective admission policies and enrollment caps to the exclusion of thousands of children – predominately low-income children of color.<sup>19</sup>

The affordable housing plan for New Orleans most starkly demonstrates that the city’s redevelopment plan depends on exiling poor

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14. Thomas, who is Black, said “I’m saying these things to motivate my people.” Eric Berger, *New Orleans Says it Won’t Give Free Ride*, HOUS. CHRON., Feb. 22, 2006, available at <http://www.chron.com/disp/story.mpl/front/3676263.html>.

15. Becky Brown et al., *Hurricane Rita: The Aftermath; Population Shift*, HOUS. CHRON., Sept. 29, 2005, at B1.

16. See Leslie Eaton, *For New Orleans, Reviving Health Care System Will Set City’s Future*, N.Y. TIMES, July 23, 2007, [http://www.nytimes.com/2007/07/23/us/24cnd-orleans.html?\\_r=1&hp&oref=slogin](http://www.nytimes.com/2007/07/23/us/24cnd-orleans.html?_r=1&hp&oref=slogin) [hereinafter Eaton, *For New Orleans*] (“Only one of the city’s seven general hospitals is operating at its pre-Katrina level; two more are partly open, and four remain closed. The number of hospital beds in New Orleans has dropped by two-thirds.”); see also Leslie Eaton, *New Orleans Recovery is Slowed by Closed Hospitals*, N.Y. TIMES, July 24, 2007, <http://www.nytimes.com/2007/07/24/us/24orleans.html?pagewanted=1&n=Top/News/Health/Diseases,%20Conditions,%20and%20Health%20Topics/Doctors> (“Of all the factors blocking the economic revival of New Orleans, the shattered health care system may be the most important . . .”).

17. See Eaton, *For New Orleans*, *supra* note 16.

18. Marcheta Gillam et al., *After Katrina: Rebuilding a Healthy New Orleans*, NEW ORLEANS HEALTH DISPARITIES INITIATIVE, May 2007, at 44, available at [http://www.prrac.org/pdf/rebuild\\_healthy\\_nola.pdf](http://www.prrac.org/pdf/rebuild_healthy_nola.pdf). The Secretary of the U.S. Department of Health and Human Services described New Orleans’ health care system “as a two-tier system: private care for people with insurance and the Charity hospital system for people with no coverage.” *Id.* at 51.

19. See Bill Quigley, *Experimenting on Someone Else’s Children: Fighting for the Right to Learn in New Orleans*, COUNTERPUNCH, Aug. 6, 2007, <http://www.counterpunch.org/quigley08062007.html>.

people of color.<sup>20</sup> The city's already-shrinking affordable housing stock<sup>21</sup> took a huge hit by Hurricane Katrina and the breach of New Orleans' levees. Of the city's 142,000 units that were damaged or lost in New Orleans due to Katrina, 112,000 – 79% – were affordable to low-income housing.<sup>22</sup> Most of these units have not been repaired or replaced, nor are there any plans to do so.<sup>23</sup> In fact, the post-Katrina redevelopment plan is to limit the construction of affordable housing. While 53.5% of New Orleans pre-Katrina residents were renters,<sup>24</sup> virtually none of the post-hurricane housing finance programs are geared toward rehabilitation of rental property. Instead, the main, multi-billion dollar program – the “Road Home Program” – assists primarily homeowners,<sup>25</sup> with no provision to assist renters directly.<sup>26</sup> After Katrina, local governments in the greater New Orleans area in-

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20. Shaila Dewan, *Road to New Life After Katrina is Closed to Many*, N.Y. TIMES, July 12, 2007, available at [http://www.nytimes.com/2007/07/12/us/nationalspecial/12exile.html?\\_r=1&adxnnl=1&oref=slogin&adxnnlx=1203208035-KdNjKx2tvuDIwwkKVQfEw](http://www.nytimes.com/2007/07/12/us/nationalspecial/12exile.html?_r=1&adxnnl=1&oref=slogin&adxnnlx=1203208035-KdNjKx2tvuDIwwkKVQfEw).

21. According to an analysis done by HUD, during the 1990s, the rental market lost almost 18,000 rental units, and more than 10,000 of these units were located in New Orleans. See Beveridge, *supra* note 4, at 7.

22. National Low Income Housing Coalition, *NLIHC Estimates 71% of Units Lost in Gulf Coast Were Low Income*, Sept. 20, 2005, available at [http://www.nlihc.org/detail/article.cfm?article\\_id=2670&id=48](http://www.nlihc.org/detail/article.cfm?article_id=2670&id=48); see also Deon Roberts, *Unaffordable Problem: N.O. Needs 30,000 Low-Income Rental Units*, NEW ORLEANS CITY BUS., Dec. 4, 2006, available at <http://www.neworleanscitybusiness.com/viewStory.cfm?recID=17465> (reporting that the Louisiana Hurricane Housing Task Force in December 2006 stated that there is an “urgent need” for 45,000 affordable rental units in Louisiana, 30,000 in New Orleans alone).

23. See Annie Clark & Kalima Rose, *Bringing Louisiana Renters Home: An Evaluation of the 2006-2007 Gulf Opportunity Zone Rental Housing Restoration Program*, POLICYLINK, June 2007, at 16, [www.policylink.org/documents/LRHC.pdf](http://www.policylink.org/documents/LRHC.pdf) (reporting that Louisiana's plan for re-pairing rental homes damaged or destroyed will replace only one-fifth of this housing).

24. See Greater New Orleans Community Data Center, *Metro New Orleans Fair Market Rent History*, [http://www.gnocdc.org/reports/fair\\_market\\_rents.html](http://www.gnocdc.org/reports/fair_market_rents.html) (last visited Mar. 23, 2008).

25. The Road Home Small Rental Property Owners program has promised conditional awards for the rehabilitation of 9,975 “affordable” rental units. See *The Road Home*, <http://www.road2la.org/rental/> (last visited Mar. 23, 2008). There are two major problems with the program. First, rents are based on the Area Median Income (AMI), with “affordable” defined as affordable to households with as much as 80% AMI. See *The Road Home*, *Frequent Questions*, <http://www.road2la.org/rental/faqs.htm#gp4> (last visited Mar. 23, 2008). Second, the program only provides conditional partial loan forgiveness (and only after a specified period of years if the property owner complies with all aspects of the program), and the property owner must secure funding for repairs on their own. *Id.*

26. See Posting of Rachel Jordan to No Road Home, A Human Rights Weblog of the Unitarian Universalist Service Committee, <http://www.uusc.org/blog/2007/09/no-road-home.html> (Sept. 26, 2007, 14:30 EST) (“The Road Home Program is meant to help mostly homeowners, leaving renters to fend for themselves. This is particularly unhelpful for a city like New Orleans, where more than half of residents rented before the storm.”) The Program did issue an “Action Taken in Response to Public Comment” in April 2006 in a stated effort to establish a first-time home owners program to assist low to moderate income renters, see <http://web.archive.org/web/20061018161533/http://www.lra.louisiana.gov/assets/april26/ResponsetoPubComRH42606.pdf>, but no such program was ever created.



roduced ordinances specifically designed to inhibit the development of affordable housing<sup>27</sup> and limit access to existing properties on the basis of race.<sup>28</sup> Additionally, the City of New Orleans pursued an aggressive demolition program primarily applied to low-income neighborhoods.”<sup>29</sup>

With a dearth of affordable housing, post-Katrina rental rates are at least 40% higher than pre-storm rates.<sup>30</sup> About one-third of New Orleans’ pre-Katrina residents, predominantly those in need of affordable housing, remain in temporary housing scattered across the country.<sup>31</sup> The number of those homeless in New Orleans has doubled since the storm, to approximately 12,000.<sup>32</sup> These statistics show that the post-Katrina redevelopment plan clearly has not fixed the inequities that pre-existed the storm, but instead has wiped out the infrastructure that would allow low-income communities of color to return. As Naomi Klein observed of the government’s actions after the hurricane: “New Orleans’ public sphere was not being rebuilt, it was being erased, with the storm used as the excuse.”<sup>33</sup>

This article will examine the government’s post-Katrina actions with respect to New Orleans public housing. Most of the city’s public housing has been kept shut since the hurricane, and an imperative to integrate the housing is being used to justify a plan to demolish most

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27. Elected officials in both Orleans and Tammany Parishes promoted efforts to restrict construction or redevelopment of multi-family housing. See knowledgeplex.com, <http://www.knowledgeplex.org/news/76901.html> (last visited Feb. 15, 2008); see also NOLA.com, *Zoning Commission Recommendation Would Block Apartment Complex*, [http://www.nola.com/newslogs/tpupdates/index.ssf/?/mtlogs/nola\\_tupdates/archives/2006\\_11\\_27.html#208752](http://www.nola.com/newslogs/tpupdates/index.ssf/?/mtlogs/nola_tupdates/archives/2006_11_27.html#208752) (last visited Feb. 15, 2008).

28. St. Bernard Parish, for example, passed an ordinance requiring property owners to rent only to blood relatives, and because parish property is overwhelmingly owned by Whites, the law would effectively prohibit African Americans from renting property. See Press Release, Lawyer’s Comm. for Civil Rights Under Law, *Fair Housing Advocates Seek to Halt Discriminatory Zoning Rule* (Nov. 2, 2006), available at <http://www.lawyerscomm.org/2005website/publications/press/press110206.html> [hereinafter Fair Housing Advocates].

29. The addresses listed for demolition in the Good Neighbor Plan, now referred to as “Imminent Health Threats Properties,” are overwhelmingly in lower-income neighborhoods of color. See City of New Orleans, <http://cityofno.com/portal.aspx?tabid=118> and <http://cityofno.com/portal.aspx?tabid=120> (last visited Feb. 15, 2008).

30. Amy Liu & Allison Plyer, *The New Orleans Index: A Review of Key Indicators of Recovery Two Years After Katrina*, THE NEW ORLEANS INDEX, at 6, <http://www.gnocdc.org/NOLAIndex/ESNOLAIndexAug07.pdf> (last visited Mar. 23, 2008).

31. According to November 2007 statistics based on households actively receiving mail, New Orleans population reached about seventy percent its pre-Katrina level. See Greater New Orleans Community Data Center, November 2007 New Orleans Population Growth May Have Begun to Slow, Jan. 15, 2008, <http://www.gnocdc.org/media/GNOCDCJan15-08.pdf>.

32. Brad Heath, *Katrina’s Wrath Lingers for New Orleans’ Poor*, USA TODAY, Dec. 13, 2007, available at [http://www.usatoday.com/news/nation/2007-12-13-katrinapoor\\_N.htm](http://www.usatoday.com/news/nation/2007-12-13-katrinapoor_N.htm).

33. KLEIN, *supra* note 6, at 415.

public housing and replace the razed units with far fewer public housing homes. This article will discuss how the post-Katrina plan for public housing in New Orleans constitutes an eradication of the buildings and families who lived in them, demonstrating that the “opportunity” created by the storm is not for the city’s low-income residents of color. It also addresses how the government’s plans for New Orleans’ public housing violate Title VIII of the Civil Rights Act of 1968 – the Fair Housing Act. The prolonged and likely permanent displacement of thousands of public housing families, despite the laws that should have provided for their right to return home, provides a solemn, stark lesson that housing advocates must heed. That these homes have not been saved serves as a call to take back the Fair Housing Act from the government agents and policymakers who have skewed the statute’s purpose to provide housing opportunities for protected groups for whom the housing market does not provide genuinely open housing.

Part I outlines the post-Katrina policies regarding New Orleans’ public housing. Part II examines the legal standards of the Fair Housing Act that required HUD and the Housing Authority of New Orleans (HANO) to take into account both the discriminatory effect of its actions on African Americans and the dearth of housing opportunities for this population. Part III demonstrates the inability of the New Orleans private housing market to provide housing opportunities to displaced residents, and highlights generally the shortfall of vouchers insofar as providing actual housing choices. Part IV urges that the lessons from the post-Katrina New Orleans public housing travesty be utilized to revitalize the core purpose of the Fair Housing Act – to ensure housing opportunities to communities that face discrimination in the market. Finally, this article, in telling the tragic story of New Orleans public housing after Hurricane Katrina, calls for a reconceptualization of fair housing policy so that policies intended to benefit poor families are not employed to the detriment of African-American families and their communities.

## I. NEW ORLEANS PUBLIC HOUSING: A HUMAN-MADE DISASTER

### A. HUD, Not the Hurricane, Destroyed Public Housing

Prior to Hurricane Katrina, HUD recognized that “[t]he need for additional public and affordable housing in the New Orleans commu-

nity is at crisis proportions.”<sup>34</sup> But HUD’s actions betrayed its own assessment. In 1996, there were more than 13,500 public housing units in New Orleans. At the time of Hurricane Katrina’s landfall, there were only 5,146 families living in public housing,<sup>35</sup> all of whom were African American.<sup>36</sup> Two thousand additional units were kept vacant for years, purportedly awaiting demolition,<sup>37</sup> while the demand for public housing greatly outstripped supply with more people on waiting lists for public housing and rental assistance than in public housing or receiving rental assistance.<sup>38</sup> Despite the significant need for affordable housing in the years preceding Hurricane Katrina, HUD and HANO were downsizing the city’s low-income population by shrinking the public housing stock.

After Hurricane Katrina, Congress directed HUD to preserve, to the extent possible, all public housing in areas affected by the storm.<sup>39</sup> According to HUD’s own post-Katrina assessments of the public housing stock in New Orleans, many units could have been preserved with some repairs.<sup>40</sup> But instead of reopening these units, HUD and HANO shut down most of the city’s public housing, securing some developments with fences and razor wire, and installing shutters over the windows and doors of others.<sup>41</sup> Despite Congress’ mandate, HUD

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34. U.S. Dep’t of Hous. and Urban Dev., PHA Plans: Annual Plan for Fiscal Year 2003, at 6, available at <http://www.hud.gov/offices/pih/pha/approved/pdf/02/la001v03.pdf>.

35. Housing Authority of New Orleans Post-Katrina Frequently Asked Questions, <http://www.HANO.org/FAQ072006.pdf> (last visited Mar. 23, 2008).

36. *Id.*

37. In 2002, HUD placed HANO in receivership. As a result, through its management team, HUD is responsible for managing the day-to-day operations of the housing authority, including HANO’s redevelopment plans. This Article, therefore, will make reference to HUD and HANO and HUD only interchangeably.

38. More than 16,000 families that applied for public housing were placed on a waiting list, and many additional families were not even able to get placed on the waiting list at all. And when the waiting list for Section 8 vouchers was opened in 2001, HANO received 19,000 applications and then closed the list to new applicants. *HANO Annual Plan for Fiscal Year Beginning 10/2003*, at 7-9, available at <http://www.hud.gov/offices/pih/pha/approved/pdf/03/la001v01.pdf>.

39. Act of Dec. 30, 2005, Pub. L. No. 109-148; 119 Stat. 2781 (2006).

40. Housing Authority of New Orleans Post-Katrina Frequently Asked Questions, *Exhibit B in Senate Banking Committee Testimony*, available at <http://www.hano.org>, Apr. 2006. (on file with authors). Even in the cases of those units with some severe damage, the presence of damage often was restricted to first floors, not upper floors where the flooding did not reach. See Bill Sasser, *Locking Out New Orleans’ Poor*, SALON.COM, June 12, 2006, [http://www.salon.com/news/feature/2006/06/12/nola\\_housing/index\\_np.html](http://www.salon.com/news/feature/2006/06/12/nola_housing/index_np.html).

41. See Susan Saulny, *Residents Clamoring to Come Home to New Orleans Projects*, N.Y. TIMES, June 6, 2006, at A14; Anne Rochell Konigsmark, *New Orleans Public-Housing Plan Set*, USA TODAY, June 14, 2006, at 3A; Robert Little, *Barred From Coming Home: New Orleans Poor Are Shut Out of Public Housing*, BALTIMORE SUN, Feb. 19, 2006, at 1A.

failed to perform even basic maintenance to many units that suffered little or no damage.<sup>42</sup>

Meanwhile, public housing residents expected to return home with the city's other residents when the mandatory evacuation was lifted six weeks after Katrina struck. Instead, they found themselves shut out of their homes and scattered across the country. As displaced persons, many encountered stigmatization and discrimination. Many were unable to find employment in their new cities, and the Bureau of Labor Statistics estimated that the unemployment rate for Hurricane Katrina evacuees who remained displaced was triple that of those who had returned.<sup>43</sup> Most were falling deeper into poverty as they struggled to pay utilities and other expenses they did not have prior to the storm. In addition to the trauma they underwent in the days and weeks after Katrina, displaced residents suffered – and many continue to endure – the strain of displacement.<sup>44</sup>

With more than 4,000 habitable public housing units sitting vacant and families remaining desperate and displaced, the government finally began unveiling its plan for New Orleans' public housing. In April 2006, HUD characterized one of the developments, C.J. Peete, which had sustained minimal interior damage and little overall damage, as “a prime location for retail and residential development.”<sup>45</sup> Redevelopment plans for the Tremé District, a historically Black neighborhood, were revealed with the announcement of a \$130-million movie studio that was going to be built on land abutting the Lafitte public housing development.<sup>46</sup> Then on June 14, 2006, HUD Secretary Alphonso Jackson announced a plan to demolish four of New Orleans' largest developments – C.J. Peete, Lafitte, B.W.

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42. In fact, after Hurricane Katrina HANO laid off a number of staff. Ed Anderson, *HANO Letting 113 Staffers Go*, TIMES-PICAYUNE, July 20, 2006, at 1.

43. See Katy Reckdahl, *Razing a Community: Second in a two-part series*, GAMBIT WKLY, Oct. 31, 2006, available at [http://www.bestofneworleans.com/dispatch/2006-10-31/news\\_feat.php](http://www.bestofneworleans.com/dispatch/2006-10-31/news_feat.php); see also Dewan, *supra* note 20, at 5 (reporting that according to a February 2007 survey, one-third of Katrina evacuees living in Houston were still looking for work).

44. For a thorough discussion of the deleterious impact of displacement and community dismemberment, see MINDY THOMPSON FULLILOVE, *ROOT SHOCK: HOW TEARING UP CITY NEIGHBORHOODS HURTS AMERICA, AND WHAT WE CAN DO ABOUT IT* (2004).

45. *HANO Preliminary Recovery Plan, C.J. Peete Housing Development* (Apr. 24, 2006) (on file with authors).

46. Deon Roberts, *Plans to build \$130M Movie Studio Near New Orleans Housing Development Irks Residents*, NEW ORLEANS CITYBUS., May 23, 2006, available at [http://findarticles.com/p/articles/mi\\_qn4200/is\\_20060523/ai\\_n16410315](http://findarticles.com/p/articles/mi_qn4200/is_20060523/ai_n16410315).

Cooper, and St. Bernard – with more than 5,000 units among them.<sup>47</sup> The plan proposes the largest demolition in the city's history,<sup>48</sup> destroying more than 70% of New Orleans public housing stock.<sup>49</sup>

HUD's plan was predicated on the fact that the housing developments were perched on prime real estate that would be central to New Orleans' redevelopment – as long as poor people were no longer living there. Public housing had become fodder for the economic revival of the city.

B. The Demolition of New Orleans Public Housing Presented an Opportunity, But Not for the Displaced Families

HUD rationalized its decision to raze thousands of public housing units by claiming that the buildings had sustained significant damage,<sup>50</sup> contradicting its prior assessments that some of these units suffered only minor water damage and many could be habitable again once repaired. However, an inspection of the buildings by John E. Fernandez from the Massachusetts Institute of Technology found no structural or nonstructural damage to reasonably warrant demolition. Professor Fernandez concluded: “[j]ustifications for demolition on the grounds that these buildings can no longer function as safe and humane housing for the people of New Orleans are not credible.”<sup>51</sup>

HUD offered another reason for its plan: Hurricane Katrina provided an opportunity to build better housing than “massive, stacked housing projects.”<sup>52</sup> However, HUD's assertion that the construction of the buildings warrants destruction was suspect:

[HUD's] argument seems strangely disingenuous in New Orleans  
. . . . Built at the height of the New Deal, [New Orleans'] public

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47. See Press Release, HUD Outlines Aggressive Plan to Bring Families Back to New Orleans' Public Housing (June 14, 2006), available at <http://www.hud.gov/news/release.cfm?content=pr06-066.cfm>.

48. Susan Saulny, *5,000 Public Housing Units in New Orleans Are to Be Razed*, N.Y. TIMES, June 15, 2006, at A1, available at <http://www.nytimes.com/2006/06/15/us/15housing.html?ex=1308024000&en=7e1599e4112fed5d&ei=5088&partner=rssnyt&>.

49. See Beveridge, *supra* note 4, at 16. In the wake of HUD's June 14, 2006, Advancement Project along with co-counsel Bill Quigley, Tracie Washington, Judson Mitchell, and Jenner & Block filed a lawsuit, *Anderson v. Jackson*, No. 06-3298, slip op. (E.D. La. Dec. 14, 2007), on behalf of displaced public housing residents against HUD and HANO.

50. Gwen Filosa, *Four N.O. Housing Developments Will Be Demolished*, TIMES-PICAYUNE, June 15, 2006, available at <http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-5/1150356990188590.xml&coll=1>.

51. Expert Report of John Emmanuel Fernandez, Professor, Massachusetts Institute of Technology, at 5 (on file with authors).

52. Alphonso Jackson, *Post-Katrina Progress Housing to Help End Suffering*, WASH. TIMES, Dec. 27, 2007, at A15.

housing projects have little in common with the dehumanizing superblocks and grim plazas that have long been an emblem of urban poverty. Modestly scaled, they include some of the best public housing built in the United States.<sup>53</sup>

In the continuation of its demolition-as-opportunity argument, HUD claimed that razing the units will “give thousands of families a fresh start.”<sup>54</sup> But this notion is premised upon a wholesale denial of neighborhood history and social networks, rendering “the vague notion of a ‘fresh start’ [an invocation] to justify erasing entire communities.”<sup>55</sup>

Official statements and the plan for New Orleans’ public housing reveal that the real opportunity being pursued is a new city for the rich and middle class. Soon after Hurricane Katrina, HUD Secretary Alphonso Jackson stated that New Orleans “is not going to be as [B]lack as it was for a long time, if ever again.”<sup>56</sup> Secretary Jackson’s statement was far from an innocent observation – it foreshadowed the plans for the city’s public housing that he allegedly has been central in orchestrating. The news, for example, later reported plans to build a “state-of-the-art golf complex suitable to host PGA Tour events” nearby the St. Bernard housing development.<sup>57</sup> A few months later, the Federal Bureau of Investigations and the HUD Inspector General launched an investigation into whether Secretary Jackson secured a non-competitive bid contract at HANO “for a golfing buddy and social friend.”<sup>58</sup> They are also investigating the circumstances surrounding the contract awarded to one of the St. Bernard developers to which the Secretary has financial ties.<sup>59</sup>

On September 21, 2007, HUD approved the demolition of most of New Orleans’ public housing and replaced the razed units with far fewer public housing units.<sup>60</sup> According to the disposition plan, the

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53. See Nicolai Ouroussoff, *All Fall Down*, N.Y. TIMES, Nov. 19, 2006, § 4, at 1.

54. See Jackson, *supra* note 52.

55. Nicolai Ouroussoff, *High Noon in New Orleans: The Bulldozers Are Ready*, N.Y. TIMES, Dec. 19, 2007, § 4, at 1.

56. Becky Brown et al., *Hurricane Rita: The Aftermath; Population Shift*, HOUS. CHRON., Sept. 29, 2005, at B1.

57. Frank Donze, *Fertile Ground*, TIMES-PICAYUNE, June 6, 2007, at 1.

58. Edward T. Pound, *Katrina Aftermath: Questionable Contracts*, NAT’L J., Oct. 4, 2007, available at <http://news.nationaljournal.com/articles/071004nj2.htm>.

59. *Id.* See also Edward T. Pound, *HUD Probe Heats Up*, NAT’L J., Dec. 14, 2007, available at <http://news.nationaljournal.com/articles/071214nj1.htm>.

60. Letter from Ainars Rodins, Director, U.S. Department of Housing and Urban Development, to Karen Cato-Turner, Executive Administrator, Housing Authority of New Orleans (Sept. 21, 2007) (on file with authors).

St. Bernard development, which consisted of 1,400 public housing units, will be replaced with 595 total units, of which only 160, or 11% of the original number of units, will be public housing units; at the C.J. Peete development, 723 public housing units will be replaced with 410 total units, of which 154, or 21% of the original number of units, will be public housing units; and at the B.W. Cooper development, 1,546 public housing units will be replaced by 410 total units, of which only 154, or 10% of the original number of units, will be public housing units.<sup>61</sup> As a result, a total of 3,201 units of housing available to very low-income families will be lost.

The redevelopment of public housing in New Orleans serves a broader vision of the city's post-Katrina redevelopment plan. It accommodates a desire to increase New Orleans' tax base by creating new commercial space at each of the public housing developments, and it meets the needs of the elite who wanted to change the demographics of New Orleans by displacing thousands of low-income, African-American families. However, as the next Section will demonstrate, the protections and mandates of the Fair Housing Act should have prevented HUD and HANO from using Hurricane Katrina as an excuse to wipe out New Orleans' public housing and exile the families who lived there prior to the storm.

## II. THE FAIR HOUSING ACT

Congress passed Title VIII of the Civil Rights Act of 1968, known as the Fair Housing Act,<sup>62</sup> one week after the assassination of Dr. Martin Luther King, Jr., and after five successive summers of racial unrest in cities across the United States.<sup>63</sup> The purpose of the legislation was to facilitate a truly open society, as it declared that the policy of the United States is to provide, within constitutional limitations, for

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61. Bill Quigley, *Why is HUD Using Tens of Millions in Katrina Money to Bulldoze 4,534 Public Housing Apartments in New Orleans When it Costs Less to Repair and Open Them up?: A Tale of Two Sisters*, COUNTERPUNCH, Dec. 29, 2006, <http://www.counterpunch.org/quigley12292006.html>.

62. Civil Rights Act of 1968, Pub. L. No. 90-284, Title VIII, § 801, 82 Stat. 81 (1968) (amended 1988).

63. John O. Calmore, *Race/ism Lost and Found: The Fair Housing Act at Thirty*, 52 U. MIAMI L. REV. 1067, 1069 (1998). See also Brian Patrick Larkin, Note, *The Forty-Year "First Step": The Fair Housing Act as an Incomplete Tool for Suburban Integration*, 107 COLUM. L. REV. 1617, 1620-24 (2007). The circumstances in which the Fair Housing Act was passed are relevant insofar as they explain the limited legislative history that accompanies the Act.

fair housing throughout the nation.<sup>64</sup> The statute not only prohibits racial discrimination in almost all sectors of housing, it also requires all federal agencies to administer housing programs “in a manner affirmatively to further” fair housing.<sup>65</sup>

This Section will demonstrate how HUD’s and HANO’s post-Katrina policies concerning public housing in New Orleans violate the Fair Housing Act.<sup>66</sup> HUD’s and HANO’s actions and redevelopment plans have had a discriminatory effect on, and have severely limited housing opportunities for, public housing residents, all of whom are African American. HUD’s plan for redevelopment of public housing in New Orleans is, in fact, no different than the “Negro removal” cases of the 1950s and 1960s, where African-American communities were removed in the name of urban revitalization.<sup>67</sup> The plan blatantly violates the core purpose of the Fair Housing Act, as it limits housing opportunities for African Americans by reducing units available to public housing families with no concrete plan for opening opportunities for these families in other areas of New Orleans. The plan effectively excludes low-income, African-American families from post-Katrina New Orleans.

A. Discrimination Claims Under Section 3604: Disparate Impact and Disparate Treatment

Section 3604 of the Fair Housing Act provides that it is unlawful to “make unavailable or deny” housing “because of race.”<sup>68</sup> Discrimination under the Fair Housing Act may be proven by showing either disparate impact or disparate treatment.<sup>69</sup> It is well established that it

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64. Calmore, *supra* note 63. When the Fair Housing Act was initially passed, the protected classes were race, color, national origin, and religion. Congress extended the Act’s protection to sex, handicap, and familial status in the Fair Housing Act Amendments of 1988, Pub. L. No. 100-430, 102 Stat. 1620 (1988).

65. Florence Roisman, *Keeping the Promise: Ending Racial Discrimination and Segregation in Federally Funded Housing*, 48 How. L.J. 913, 914 (2005). Roisman notes that “[t]he 1988 Fair Housing Amendments Act substantially strengthened the 1968 Act, and various housing and community development statutes later explicitly extended the ‘affirmatively to further’ and related obligations to public housing authorities and other agencies.” *Id.*

66. In addition to claims under the Fair Housing Act, public housing residents have additional protections under the U.S. Housing Act of 1937, 42 U.S.C. § 1437p, the Equal Protection Clause and Due Process Clauses of the U.S. Constitution, and the International law embodied in the U.N. Guiding Principles on Internally Displaced Persons.

67. See generally Rigel C. Oliveri, *Is Acquisition Everything? Protecting the Rights of Occupants Under the Fair Housing Act*, 43 HARV. C.R.-C.L. L. REV. 1, 61 n.294 (2008).

68. 42 U.S.C. § 3604(a) (1968).

69. See, e.g., *Harris v. Itzhaki*, 183 F.3d 1043, 1051 (9th Cir. 1999) (“A plaintiff can establish a FHA discrimination claim under a theory of disparate treatment or disparate impact.”); Simms



is not necessary to show discriminatory intent to prove a claim under Section 3604 – “[e]ffect, not motivation, is the touchstone” under the Fair Housing Act.<sup>70</sup> In the case of the closure and redevelopment of New Orleans’ public housing after Hurricane Katrina, HUD’s and HANO’s actions have demonstrated both discriminatory effect and intent.

### 1. Disparate Impact

Disparate impact is a critical method of proving housing discrimination as, “the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willful scheme.”<sup>71</sup> A *prima facie* case of disparate impact under Section 3604 of the Fair Housing Act must demonstrate that the policy, procedure, or practice will have or has had a significant discriminatory effect on a protected group.<sup>72</sup> Such a case may be

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v. First Gibraltar Bank, 83 F.2d 1546, 1555-56 (5th Cir. 1996) (holding that plaintiff can establish fair housing violation with evidence of discriminatory intent or discriminatory effects); Doe v. City of Butler, 892 F.2d 315, 323 (3d Cir. 1989) (ruling that *prima facie* cases under Title VIII can be brought with a showing of discriminatory treatment or discriminatory effect alone, without intent); Arthur v. City of Toledo, 782 F.2d 565, 574-75 (6th Cir. 1986) (finding that facially neutral housing decisions can still have discriminatory effects); Phillips v. Hunter Trails Cmty. Ass’n, 685 F.2d 184, 189-90 (7th Cir. 1982) (observing that some fair housing violations arise from discrete transactions and others have broader context, “when a facially neutral policy or action has an unequal impact on different subgroups in the housing market”). See also Robert G. Schwemm, *Housing Discrimination Law and Litigation* § 10.1 (June 2007) (In the absence of an authoritative Supreme Court ruling on § 3604, lower courts have adopted the Title VII employment discrimination standard that discrimination may be proven by a showing of disparate impact or disparate treatment.).

70. Smith v. Anchor Bldg. Corp., 536 F.2d 231, 233 (8th Cir. 1976); accord Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 934-36 (2d Cir. 1988) (applying Title VII analysis to Title VIII and ruling that plaintiff need not make any showing of discriminatory intent for a disparate impact claim); Metro. Hous. Corp. v. Arlington Heights (*Arlington Heights II*), 558 F.2d 1283, 1290 (7th Cir. 1977) (“We therefore hold that at least under some circumstances a violation of section 3604(a) can be established by a showing of discriminatory effect without a showing of discriminatory intent.”); U.S. v. City of Black Jack, 508 F.2d 1179, 1185 (8th Cir. 1974) (“The plaintiff need make no showing whatsoever that the action resulting in racial discrimination in housing was racially motivated”). See generally Robert G. Schwemm, *Housing Discrimination Law and Litigation* § 10.4 (June 2006).

71. *City of Black Jack*, 508 F.2d at 1185 (quoting *Hobson v. Hansen*, 269 F. Supp. 401, 497 (D.D.C. 1967), *aff’d sub nom.* *Smuck v. Hobson*, 132 U.S. App. D.C. 372, 408 F.2d 175 (1969) (en banc)).

72. See, e.g., *Simms*, 83 F.3d at 1555 (“The relevant question in a discriminatory effects claim against a private defendant . . . is whether a policy, procedure, or practice specifically identified by the plaintiff has a significantly greater discriminatory impact on members of a protected class.”); *Williams v. Matthews Co.*, 499 F.2d 819, 826 (“where a Negro buyer meets the objective requirements of a real estate developer so that a sale would in all likelihood have been consummated were he [W]hite and statistics show that all of a substantial number of lots in the development have been sold only to [W]hites, a *prima facie* inference of discrimination arises as a matter of law”); *Huntington*, 844 F.2d at 934-36 (agreeing that *prima facie* case is established by

made by proving either: (1) the ultimate effect of the housing decision may be racially discriminatory because it tends to exclude a protected group; or (2) the immediate effect of the housing decision has “a greater adverse impact on one racial group than on another.”<sup>73</sup>

The effect analysis simply looks at whether a decision results in, or can be predicted to result in, a disparate impact on a protected class. For example, in a case where Black residents sued the town of Clarkton, North Carolina, for blocking the construction of public housing units, the Fourth Circuit found that the town’s actions violated Section 3604:

The undisputed statistical picture leaves no doubt that the [B]lack population of Bladen County was adversely affected by the termination of the housing project, as it is that population most in need of new construction to replace substandard housing, and it is the one with the highest percentage of presumptively eligible applicants.<sup>74</sup>

Disparate impact is also established under Section 3604 where the ultimate effect of a decision is to prevent a protected group from residing in a city. In *Rizzo I*, the court found a Fair Housing Act violation when an urban renewal plan effectively removed a substantial number of African Americans from the city.<sup>75</sup> Similarly, a challenge to a city’s failure to provide replacement housing to low-income residents displaced by freeway construction was found to have a disparate impact in violation of the Fair Housing Act:

The ultimate effect of frustrating the [developments] is to prevent low income minority displacees from continuing to reside in [the city]. If affordable housing is not made available in [the city] by the

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showing that challenged practice of defendant effectively results in racial discrimination); *Rizzo II*, 564 F.2d at 148 (“[D]iscriminatory effect alone will, if proved, establish a Title VII *prima facie* case.”).

73. *Arlington Heights II*, 558 F.2d at 1290 (ruling that disproportionate, but not predominate, effect on racial minorities was unclear evidence of discriminatory effect).

74. *Smith v. Town of Clarkton*, 682 F.2d 1055, 1065 (4th Cir. 1982). See also *Charleston Hous. Auth. v. U.S. Dept. of Agriculture*, 419 F.3d 729 740-41 (8th Cir. 2005) (holding that effects analysis looks at whether “the objected-to action results in, or can be predicted to result in, a disparate impact upon a protected class compared to a relevant population as a whole”); *Oti Kaga, Inc. v. South Dakota Hous. Dev. Auth.*, 342 F.3d 871, 883-84 (8th Cir. 2003) (plaintiffs “must show a facially neutral policy has a significant adverse impact on members of a protected minority group”).

75. See *Rizzo II*, 564 F.2d at 149 (“Whereas originally almost 45% of the families living in the Whitman project area were [B]lack, by the time urban renewal clearance was completed and the surrounding blocks reconstructed, virtually no [B]lack families were to be found in the area.”); *Keith v. Volpe (Volpe I)*, 618 F. Supp. 1132, 1151 (C.D. Cal. 1985) (finding that apparent outcome of denying affordable housing developments was racially discriminatory where lack of new housing would not only prevent non-resident minorities from moving to the city, but would result in expulsion of current residents who were soon to be displaced).

time they are displaced, they will have to move out of [the city] altogether.<sup>76</sup>

In the case of post-Katrina New Orleans, HUD's demolition and redevelopment plans have the effect of permanently displacing a significant number of African-American families from the city. HUD reopened only 1,700 units of public housing, thus significantly reducing housing opportunities for both the almost 3,500 families that still remain displaced and others in need of housing. The critical shortage of affordable housing in New Orleans, with no plan for substantial replacement, exacerbates the discriminatory effect of HUD's actions.<sup>77</sup> HUD's plans for public housing in post-Katrina New Orleans have disproportionately impacted African Americans, and the Fair Housing Act requires the government and public housing authorities (PHAs) to take this impact into account when rendering its decisions. By not doing so, HUD has unlawfully denied thousands of families the right to return and to participate in the redevelopment of their city.

In the case of an immediate effect analysis, the benchmark Fair Housing Act cases have held that when the group affected by an adverse housing decision consists largely of minorities, the decision necessarily has an adverse impact. In *Rizzo I*, 95% of the group affected by the city's failure to construct low-income housing was African American, and the court held that the city had violated the Fair Housing Act.<sup>78</sup> *Arlington Heights II* established that the strength of a disparate impact showing is directly proportionate to what percentage of the group is part of a protected class. Specifically, the court found that "the argument for racial discrimination [in that case, 40%] is . . .

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76. *Volpe I*, 618 F. Supp. at 1151, *aff'd*, 858 F.2d 467.

77. See *infra* Section III.A. In general, at the end of 2006, less than one third of African-American residents had returned to Orleans Parish. Press Release, National Fair Housing Alliance, "Still No Home for the Holidays" for Katrina Survivors, (Dec. 22, 2006) at 5, available at [www.fhco.org/NEWS-NAFH%20No%20Hm%20for%20Katrina%20Victims-resource\\_26986181982853585808.pdf](http://www.fhco.org/NEWS-NAFH%20No%20Hm%20for%20Katrina%20Victims-resource_26986181982853585808.pdf).

78. See *Residents Advisory Bd. v. Rizzo (Rizzo I)*, 425 F. Supp. 987, 1018 (E.D. Pa. 1976) (finding that prevention of affordable housing projects had an adverse impact on African-American residents of Philadelphia where developments would have been "a unique opportunity for these Blacks living in racially impacted areas of Philadelphia to live in an integrated, non-racially impacted neighborhood"); See also *Smith v. Town of Clarkton*, 682 F.2d 1055, 1065 (4th Cir. 1982) ("The undisputed statistical picture leaves no doubt that the [B]lack population of Bladen County was adversely affected by the termination of the housing project, as it is that population most in need of new construction to replace substandard housing, and it is the one with the highest percentage of presumptively eligible applicants.").

not as strong as it would be if all or most of the group adversely affected were nonwhite.”<sup>79</sup>

Some courts, however, have held that a *prima facie* disparate impact case under Section 3604 requires a showing of a statistical disparity between the protected group impacted and a non-protected group.<sup>80</sup> But by requiring a non-protected comparison group, these courts are applying a disparate treatment comparison analysis, not an effects test. Further, courts that have found no discrimination simply because the group impacted is comprised solely of members of a protected class have turned the Fair Housing Act on its head. Indeed, this reading of Section 3604 fails to recognize that the effect of discriminatory housing practices may be the elimination of a non-protected group with which to show a statistical disparity. Take for example a jurisdiction where there has been thirty years of segregated housing patterns due to zoning, redlining, and racial steering. The ultimate effect of decades of such discriminatory housing practices is that the residents of the area are all African American. It is antithetical to an anti-discrimination statute to thereafter deny that a discriminatory practice violates Section 3604 because the impacted community is now all Black.

In New Orleans, the 5,146 families living in public housing prior to Hurricane Katrina were all African American.<sup>81</sup> Structural racism and the long legacy of discrimination in this country had much, if not all, to do with this fact.<sup>82</sup> The Fair Housing Act must be interpreted to recognize the direct relationship between historical housing discrimination against African Americans and the fact that the immediate effect of a policy has a disparate impact on a group that is entirely African American. HUD’s demolition and disposition plan impacts thousands of African American families, and it thereby necessarily

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79. *Arlington Heights II*, 558 F.2d at 1291.

80. See, e.g., *Stout v. Baxter Healthcare Corp.*, 282 F.3d 856, 860 (5th Cir. 2002) (“Ordinarily, a *prima facie* disparate impact case requires a showing of a substantial statistical disparity between protected and non-protected [individuals]”); *Darst-Webbe Tenant Assn. Bd. v. St. Louis Hous. Auth.*, 299 F. Supp.2d 952, 957 (E.D. Mo. 2004) (“[T]here is no basis for the Court to find either disparate impact or purposeful discrimination because the Plaintiffs in this case cannot be shown to have been treated differently than any other group of similarly situated persons.”); *Bryant Woods Inn v. Howard County*, 911 F.Supp. 918, 939 (D. Md. 1996) (“[W]here only one group or class of persons is affected by a particular decision, there is no disparity in treatment between groups and no ‘disparate impact.’”).

81. New Orleans Housing Authority Residents Characteristics Report 2005-06, <http://pic.hud.gov/pic/RCRPublic/rcrha.asp> (last visited Mar. 4, 2008).

82. See text accompanying *supra* notes 7 and 34-38.

has an adverse impact in violation of Section 3604 of the Fair Housing Act.

## 2. Disparate Treatment

Disparate treatment, or discriminatory intent, occurs when a housing practice is motivated by considerations of race, color, religion, sex, handicap, familial status, and national origin (*i.e.*, one of the protected classes).<sup>83</sup> Discrimination based on intentional consideration of any of these factors is illegal, even if the practice was not motivated by personal prejudice or racial animus.<sup>84</sup> In determining whether official action was taken with discriminatory intent, courts apply the standard used in the Equal Protection context.<sup>85</sup>

Evidence of discriminatory motive may be either direct or circumstantial.<sup>86</sup> Direct evidence is defined as evidence that “proves the existence of the fact in issue without inference or presumption.”<sup>87</sup> The Supreme Court in *Arlington Heights* held that in the absence of direct evidence, discriminatory intent may be proven by the following circumstantial evidence: (1) historical background of the challenged decision; (2) specific sequence of events leading up to the decision; (3) any procedural and substantive departures from the norm; and (4) legislative or administrative history of the decision.<sup>88</sup>

In the case of the closure of public housing in New Orleans, there is both direct and circumstantial evidence of discriminatory motive. Shortly after Hurricane Katrina, HUD Secretary Alphonso Jackson stated that New Orleans “is not going to be as [B]lack as it was for a long time, if ever again.”<sup>89</sup> He further stated that “[o]nly the best residents should return.” Secretary Jackson, who is Black, acknowl-

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83. Robert G. Schwemm, HOUSING DISCRIMINATION LAW AND LITIGATION §10.2 (June 2007).

84. *Id.*

85. See *U.S. v. Birmingham*, 727 F.2d 560, 565-66 (6th Cir. 1984), *cert. denied*, 469 U.S. 821 (1984) (affirming trial court's judgment that city acted with racially discriminatory intent in violation of the Fair Housing Act when it blocked the construction of low-income housing).

86. Schwemm, *supra* note 83.

87. *Id.* (internal brackets omitted), *citing* BLACK'S LAW DICTIONARY 413-14 (5th ed. 1981).

88. *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1997). The determination of disparate treatment under Section 3604 “demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Id.* at 266. See also *Hanson v. Veterans Admin.*, 800 F.2d 1381, 1388 (5th Cir. 1986) (weighing circumstantial evidence proffered by the plaintiffs to show defendants' discriminatory intent against defendants' rebuttal evidence).

89. Lori Rodriguez et al., *Hurricane Rita: The Aftermath/Population Shift*, HOUS. CHRON., Sept. 29, 2005, at B1.

edged this comment's racially suggestive nature by telling a White reporter, "[i]f you said this, they would say you were racist."<sup>90</sup> These statements, made by the person responsible for ensuring equal housing opportunities, are direct evidence of discrimination. While there may be no animus, Secretary Jackson's statements suggest that HUD planned not only to abdicate its duty to ensure open housing choice, but also sought to exclude residents who were not the "best."

The circumstantial evidence of discriminatory motive is ample. Soon after Hurricane Katrina, an influential business person, the then-president of New Orleans' City Council, and a Louisiana Congress member all made statements to suggest that New Orleans is better off if residents such as public housing families do not return.<sup>91</sup> These statements were followed by plans to replace the majority of the city's public housing with commercial development<sup>92</sup> and to turn neighborhoods devastated by the storm into green space.<sup>93</sup> Thousands of families remained displaced and tens of thousands more were in desperate need of affordable housing in New Orleans when HUD approved a demolition and disposition plan to raze habitable public housing units and replace them with a tiny fraction of the original number of homes available to very low-income residents.

#### B. Section 3608: Affirmatively Furthering Fair Housing

Under Section 3608 of the Fair Housing Act, the federal government has a duty to "further fair housing."<sup>94</sup> Section 3608 imposes an affirmative obligation, in that it requires HUD to do "more . . . than simply to refrain from discriminating itself or from purposely aiding the discrimination of others."<sup>95</sup> Section 3608's intent is to see "the end[ ] of discrimination as a means toward truly opening the nation's housing stock to persons of every race and creed."<sup>96</sup> Indeed, courts have held that the duty to affirmatively further fair housing requires HUD to consider:

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90. Bill Walsh, *Only 'Best Residents' to be Allowed Back in St. Thomas Complex*, TIMES-PICAYUNE, Apr. 24, 2006, at 1.

91. See *supra* text accompanying notes 12-14.

92. See *supra* text accompanying notes 45-46, 57.

93. See Robin Pogrebin, *Rebuilding New Orleans, Post-Katrina Style*, N.Y. TIMES, Nov. 6, 2007, § E, at 1.

94. 42 U.S.C. § 3608(d) (1968).

95. NAACP v. HUD, 817 F.2d 149, 154 (1st Cir. 1987).

96. Florence Roisman, *Mandates Unsatisfied: The Low Income Housing Tax Credit Program and the Civil Rights Laws*, 52 U. MIAMI L. REV. 1011, 1028 (1998).

[T]he effect of its actions on the racial and socioeconomic composition of the surrounding area . . . [T]he need for such consideration itself implies, at a minimum an obligation to assess negatively those aspects of a proposed cause of action that would further limit the supply of genuinely open housing. . . .<sup>97</sup>

The duty to affirmatively further fair housing has been characterized by some as having dual objectives – countering discrimination and furthering integration in the housing market.<sup>98</sup> Others, however, question the integration goal of the Fair Housing Act,<sup>99</sup> and suggest that even if the Act contains dual goals, the anti-discrimination purpose should take precedent.<sup>100</sup> The latter position is supported by *Shannon v. HUD*, where the Third Circuit clarified the government's duties under Section 3608:

We [are not] suggesting that desegregation of housing is the only goal of the national housing policy. There will be instances where a pressing case may be made for the rebuilding of a racial ghetto. We hold only that the agency's judgment must be an informed one; one which weighs the alternatives and finds that the need for physical rehabilitation or additional minority housing at a site in question clearly outweighs the disadvantage of increasing or perpetuating racial concentration.<sup>101</sup>

Cases where courts have found a violation of HUD's obligation to further fair housing have in all instances involved agency practices that have created and maintained racially segregated public housing developments, including tenant assignments and selective enforcement of regulations.<sup>102</sup> The remedy tailored for such violations has

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97. *Project B.A.S.I.C. v. Kemp*, 776 F. Supp. 637, 642 (D.R.I. 1991), *overturned on other grounds by* *Project B.A.S.I.C. v. Kemp*, 947 F.2d 11 (1st Cir. 1991). *See also* *NAACP v. HUD*, 817 F.2d 149, 156 (1st Cir. 1987) (stating that § 3608 imposes, "at a minimum, an obligation to assess negatively those aspects of a proposed course of action that would further limit the supply of genuinely open housing and to assess positively those aspects of a proposed course of action that would increase the supply"); *Rizzo I*, 425 F. Supp. at 1015 (discussing Congressional intent in enacting the Fair Housing Act and obliging HUD to take affirmative action to provide for desegregated and fair housing).

98. Roisman, *supra* note 96, at 1027.

99. Michael R. Tein, *The Devaluation of Nonwhite Community in Remedies for Subsidized Housing Discrimination*, 140 U. PA. L. REV. 1463, 1467 (1992) ("The 'anti-discrimination' goal is explicit in the Act; the 'integration' goal has been read into it, largely through reference to the legislative history.").

100. *Id.* at 1470 ("If the subsidized housing stage is to be shared by both 'anti-discrimination' and 'integration,' the second goal must yield the spotlight to the first should they conflict.").

101. *Shannon v. HUD*, 436 F.2d 809, 822 (3d Cir. 1970), *quoted in* Ngai Pindell, *Is There Hope for HOPE VI?: Community Economic Development and Localism*, 35 CONN. L. REV. 385, 427-28 (2003).

102. *See, e.g.,* *Thompson v. HUD*, 2006 U.S. Dist. LEXIS 9416 \*7 (D. Md. Jan. 10, 2006) (finding HUD liable for failing to promote desegregation by basing public housing decisions on

been court-ordered desegregation. This, however, has created a “remedial structure that privileges integration over anti-discrimination,”<sup>103</sup> a schema that has significant limitations. First, desegregation of public housing has become virtually synonymous with deconcentration of poverty, which in turn has led to a massive reduction of public housing. As a result, scores of African-American families have been displaced by redeveloped, integrated housing sites. The goal of desegregation is subsequently undermined as displaced families are simply forced into other segregated neighborhoods as a result of discrimination in private housing markets and HUD’s failure to provide assistance to families pursuing such choices.

Second, an integration approach to the redevelopment of public housing does not account for the importance of community – relationships “solidified by ties providing a feeling of collective identity, self-awareness, and affiliation.”<sup>104</sup> In fact, “[i]t is usually at the expense of community that [B]lack improve their housing package in integrated settings dominated by [W]hites.”<sup>105</sup> Third, the focus on desegregation and then limited integration ignores the option of nonsegregation, which confers the right of people to remain in their neighborhood. Non-segregation interprets fair housing not as forced relocation but as neighborhood enrichment so as to create spatial equality.<sup>106</sup>

Interpreting Section 3608 of the Fair Housing Act to be solely – or even predominantly – an integration mandate facilitated the travesty in New Orleans by legitimating the mass displacement of low-income, African-American families. The plans pursued by HUD after Hurricane Katrina suggest that this cookie-cutter approach to fair

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small and discrete, rather than regional, geographic considerations); *Young v. Pierce*, 628 F. Supp. 1037, 1047 (E.D. Tex. 1985) (holding HUD liable for violating the Fair Housing Act and other civil rights laws where HUD had willfully ignored ongoing segregation in projects it was funding and failed to keep records or take action to enforce the laws); *Walker v. U.S. Dep’t of Hous. & Urban Dev.*, 734 F. Supp. 1231, 1232 (N.D. Tex. 1989), *rev’d in part and vacated in part*, *Walker v. U.S. Dep’t of Hous. & Urban Dev.*, 912 F.2d 819, 820 (5th Cir. 1990) (finding that HUD stalled major housing revitalization plan in a discriminatory manner by withdrawing funding); *Trafficante v. Metro. Life Ins.*, 409 U.S. 205 (1972) (granting standing to private residents to sue landlord for housing discrimination because HUD lacks enforcement power and has limited resources to manage all fair housing nationwide); *Gautreaux v. Chicago Hous. Auth.*, 296 F. Supp. 907 (N.D. Ill. 1969) (agreeing with plaintiffs that local housing authority discriminated in tenant assignments and site selections, perpetuating segregation).

103. Tein, *supra* note 99, at 1471-72.

104. John O. Calmore, *The Urban Crisis: The Kerner Commission Report Revisted, Spatial Equality and the Kerner Commission Report: A Back-To-The-Future Essay*, 71 N.C. L. Rev. 1487, 1501 (1993).

105. *Id.* at 1505.

106. *Id.* at 1492, 1498.



housing has gone too far and is applied without regard to the end result. There is no question that HUD's plan to demolish a majority of New Orleans' public housing and provide a fraction of replacement units limits the supply of affordable housing in post-Katrina New Orleans.<sup>107</sup> HUD's plan not only limits housing choice for displaced public housing residents in New Orleans, it effectively denies their right to return at all.

The Fair Housing Act should not stand for the proposition that HUD's duty under Section 3608 begins and ends with "deconcentrating" poverty, or that demolishing public housing structures and replacing them with mixed-income developments with far fewer housing units for low-income families affirmatively furthers fair housing. Desegregation was never meant to be a proxy for restricting housing opportunities for African Americans in New Orleans or anywhere else.<sup>108</sup> The government has used its obligations under Section 3608 to serve as "as political cover for . . . massive reductions in the number of housing units subsidized for community's poorest residents . . . [and] massive reductions in poor African Americans in a post-Katrina New Orleans."<sup>109</sup>

HUD's desegregation justification cannot hide the fact that its plan in New Orleans and in cities across the country to drastically reduce the supply of affordable housing is unlawful under the Fair Housing Act. In developing and approving its plan for New Orleans' public housing, HUD should have considered discriminatory statements indicating a desire to maintain displacement, city plans that exclude low-income African Americans in exchange for wealthier, Whites and commercial development plans suited for them, discrimination in the local housing market, and the lack of affordable housing opportunities. As discussed in Part III, the dearth of affordable housing in the private market coupled with discrimination in post-Katrina New Orleans and nationally demonstrate that the government cannot fulfill its obligation to affirmatively further fair housing by reducing the number of public housing units and not accounting for market forces that deny housing opportunities for African Americans.

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107. See *supra* text accompanying note 61.

108. See Florence Wagman Roisman, *Affirmatively Furthering Fair Housing in Regional Housing Markets: The Baltimore Fair Public Housing Desegregation Litigation*, 42 WAKE FOREST L. REV. 333, 343 (2007).

109. Stacy E. Seicshnaydre, *The More Things Change, the More They Stay the Same: In Search of a Just Public Housing Policy Post Katrina*, 81 TUL. L. REV. 1263, 1272 (2007).

### III. A HOUSING MARKET OF LIMITED OPPORTUNITIES

In New Orleans and in cities across the United States, HUD has substituted actual housing opportunities with rental vouchers for a bulk of public housing families, who invariably are displaced permanently by HUD's deconcentration policies. Indeed, vouchers are proscribed by statute to provide housing opportunities for public housing residents when demolition is approved. The U.S. Housing Act of 1937 requires that before HUD can approve a demolition/disposition application, the PHA must ensure that each displaced resident is offered comparable housing.<sup>110</sup> The statute permits the PHA to provide comparable housing through tenant-based vouchers. However, the law requires families to have successfully relocated into such housing before the PHA is deemed to have satisfied its comparable housing mandate.<sup>111</sup> In New Orleans and nationally, vouchers have not translated into housing opportunities for African Americans.

#### A. The Non-Viability of Rental Vouchers in New Orleans

In post-Katrina New Orleans, there is a severe shortage of housing and, thus, vouchers are not a viable option for public housing families seeking to return to the city. Returning families and reconstruction workers have been competing for the very limited supply of available housing.<sup>112</sup> Rents in Orleans Parish have escalated to rates 45% higher than pre-Katrina rates.<sup>113</sup>

Availability of affordable housing in New Orleans continues to be severely limited. While HUD increased the value of vouchers to try to meet the post-Katrina skyrocketing rents, there is still a shortage of housing to accommodate the need. Additionally, vouchers do not cover the exorbitant security deposits and utility payments residents are expected to pay. The forecast for an increased supply of afforda-

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110. 42 U.S.C. § 1437p(a)(4)(C) (1998).

111. 42 U.S.C. § 1437p(a)(4)(A)(iii)(aa).

112. On August 5, 2006, HANO itself stated: "The unprecedented level of devastation wrought by Katrina has created a serious shortage of available housing throughout Orleans Parish. Many of the smaller Section 8 landlords lost units that will probably not return to the market any time soon. Also there was severe damage to multi-family units in the New Orleans area - putting an even bigger strain on the housing supply. . . These conditions are adversely affecting the rental housing market and will drastically affect HANO clients' ability to return to the City of New Orleans." Housing Authority of New Orleans, Response to Congressional Follow-Up Questions (Aug. 5, 2006) (on file with authors).

113. *Gulf Coast Housing Recovery Act of 2007 Before the S. Comm. on Banking, Housing, and Urban Affairs*, 110th Cong. 7 (2007) (statement of Amy Liu, Deputy Director, Metropolitan Policy Program, The Brookings Institute), available at [http://banking.senate.gov/\\_files/liu.pdf](http://banking.senate.gov/_files/liu.pdf).

ble housing is grim – two years after Katrina, the Greater New Orleans Fair Action Housing Center stated that “[t]here are scarce affordable housing units available or coming on line in the New Orleans area due to local governmental efforts to curtail the development of affordable housing.”<sup>114</sup> Some public housing residents who have returned to New Orleans have become part of the city’s homeless population, which has doubled since the hurricane to over 12,000.<sup>115</sup>

In addition to actual supply, housing opportunities in New Orleans and its suburbs are curtailed by discrimination against African-American renters. A study entitled *No Home for the Holidays* reported that Black displaced residents seeking housing encountered discrimination in 66% of their attempts to locate housing.<sup>116</sup> An audit of the New Orleans metro area rental market for housing discrimination based on race found discrimination against African Americans in 57.5% of transactions.<sup>117</sup> Such stark data means that discrimination, combined with other barriers to housing in the New Orleans Metro area for tenants requiring federal and other subsidies, creates “barriers to housing” that are “nearly insurmountable.”<sup>118</sup>

Moreover, discrimination against African Americans in the parishes surrounding New Orleans is significant, rendering their housing choices in the neighborhoods just outside New Orleans similarly restrictive. Jefferson Parish has been described as “Louisiana’s most notoriously racist parish.”<sup>119</sup> After Hurricane Katrina, St. Bernard Parish passed an ordinance requiring property owners to rent only to blood relatives, and because parish property is overwhelmingly owned by Whites, the law effectively prohibited African Americans from renting property.<sup>120</sup>

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114. See Letter to Ainars Rodins, *supra* note 11.

115. See John Moreno Gonzales, *Homeless on the Rise in New Orleans*, BOSTON GLOBE, Aug. 19, 2007, available at [http://www.boston.com/news/nation/articles/2007/08/19/homeless\\_on\\_the\\_rise\\_in\\_new\\_orleans/](http://www.boston.com/news/nation/articles/2007/08/19/homeless_on_the_rise_in_new_orleans/) (According to the New Orleans Police Department spokesperson, this surge in homelessness is “draining resources.”). See also Bill Sasser, *Surge in Homelessness Hits New Orleans*, THE CHRISTIAN SCI. MONITOR, Mar. 28, 2007, available at <http://www.csmonitor.com/2007/0328/p03s03-ussc.html>.

116. *Gulf Coast Housing Recovery Act of 2007 Before the S. Comm. on Banking, Housing, and Urban Affairs*, 110th Cong. 7 (2007) (statement of James Perry, Executive Director, Greater New Orleans Fair Housing Action Center and President, Louisiana Housing Alliance on behalf of The National Low Income Housing Coalition), available at [http://banking.senate.gov/\\_files/perry.pdf](http://banking.senate.gov/_files/perry.pdf).

117. *Id.* at 7.

118. Beveridge, *supra* note 4, at 12.

119. Eaton, *supra* note 2, at 134.

120. See Fair Housing Advocates, *supra* note 28.

The dearth of affordable housing coupled with discrimination against African Americans renders vouchers an utterly inadequate way to provide housing opportunities in New Orleans for displaced public housing residents. As such, HUD's and HANO's compliance with the Fair Housing Act depended upon providing hard housing units by either opening shuttered public housing apartments or creating new housing.

B. A National Crisis of Genuine Housing Choice

Nationally, and outside the context of crises like Hurricane Katrina, vouchers have proven to be a very limited method of providing housing choice. One of the reasons vouchers tend to be ineffective is simply because there is more demand for affordable housing than there is supply. In 1999, there was a 1.8 million gap between the available rental units affordable to households with incomes under seventy percent of area median and the demand for these units.<sup>121</sup> Absent government intervention, the market simply cannot meet the demand for affordable housing.

HUD has acknowledged this reality. In *Thompson v. HUD*, where the court held that Section 3608 required HUD to actively promote regional housing opportunities for the Baltimore region's low-income families living in federally-assisted housing, HUD recognized that one of the "lessons learned" from its HOPE VI program<sup>122</sup> is that housing vouchers are "not viable housing options" in tight housing markets.<sup>123</sup> In the HOPE VI program, during the years 1993 through 1999 only 11.4% of 22,500 displaced public housing residents were

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121. Note, *When Hope Falls Short: HOPE VI, Accountability, and the Privatization of Public Housing*, 116 HARV. L. REV. 1477, 1488 (2003).

122. With the deterioration of public housing and the dwindling of federal financial support for HUD, Congress created HOPE VI, a program that promotes private sector participation in public housing financing and development. See *id.* at 1478-79. A 1993 annual appropriations act established HOPE VI, and in 1998 "Congress permanently authorized HOPE VI as Section 24 of the Housing Act of 1937" with the enactment of QHWA [the Quality Housing and Work Responsibility Act]. Pindell, *supra* note 101, at 390-91. The program has been described as "almost the only active part of public housing today." Florence Wagman Roisman, *Keeping the Promise: Ending Racial Discrimination and Segregation in Federally Funded Housing*, 48 HOW. L.J. 913, 922 (2005).

123. *Thompson v. HUD*, 348 F. Supp. 2d 398 (D. Md. 2005). HUD has recognized in its "Best Practices" guide that "[i]n tight housing markets, or where there is a deficit in available housing relative to demand, HOPE VI grantees should pursue a replacement housing strategy that relies more heavily on hard public housing units." *HOPE VI Best Practices and Lessons Learned 1992-2002*, published by HUD (June 14, 2002) (on file with authors).

slated to reoccupy HOPE VI sites,<sup>124</sup> leaving the rest to fend for themselves in the private market:

Residents identify numerous barriers to successful use of vouchers, including costly credit checks and security deposits; limited search time due to voucher expiration dates and employment; personal problems such as relatives with criminal backgrounds; discrimination based on race, status as a public housing resident or use of a voucher; and competition for units in better neighborhoods. Many residents report that PHA-sponsored relocation counselors pressure them to move to neighborhoods they consider as bad as the ones they are leaving.<sup>125</sup>

Indeed, discrimination in the housing market nationwide is pervasive. The use of tenant selection criteria such as employment or income requirements bar many residents from using vouchers.<sup>126</sup> Whether latent or covert, discrimination in the rental market exists today. The 2000 Housing Discrimination Study “showed continuing, substantial discrimination” against Blacks and Latinos in the rental of housing,<sup>127</sup> and in rental tests conducted by HUD in 2000, Whites were favored over Blacks 21.6% of the time and over Latinos 25.7% of the time.<sup>128</sup> HUD’s studies “show that the rate of illegal race and national origin discrimination in housing rental has remained virtually constant over the past three decades.”<sup>129</sup>

In the case of New Orleans as well as nationwide, the mere issuance of vouchers to public housing residents displaced by HUD’s redevelopment plans cannot meet HUD’s obligation to affirmatively further fair housing, because vouchers simply do not offer the housing opportunities the statute was intended to create for African Americans.

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124. Note, *supra* note 121, at 1490.

125. *Id.* at 1490-91; *see also* Pindell, *supra* note 101, at 406 (“[V]oucher recipients have been frustrated by obstacles to obtaining their choice in housing . . . rais[ing] the issue of resegregation . . .”).

126. *See, e.g.,* Walker v. HUD, No. 3:85-CV-1210-R, WL 33177466, at \*31 (N.D. Tex. Oct. 6, 1997).

127. Roisman, *supra* note 65, at 916.

128. Robert G. Schwemm, *Housing Rights Article: Why Do Landlords Still Discriminate (And What Can Be Done About It?)*, 40 T. MARSHALL L. REV. 455, 456-57 (2007).

129. *Id.* at 458.

#### IV. TOWARD A RECONCEPTUALIZATION OF FAIR HOUSING

Segregation and racial discrimination in the U.S. housing market continue to be widespread problems despite the enactment of the Fair Housing Act. HUD's lackadaisical enforcement of the Fair Housing Act in combination with its wholesale dismantling of the country's public housing system without securing a safety net for low-income families has restricted housing opportunities for poor families of color. The hypocrisies of the government's interpretation of its fair housing duties are most readily apparent in its plans for New Orleans' public housing after Hurricane Katrina, where thousands of public housing families have been excluded from their homes and the city, and will remain displaced for a long time, if not forever, while HUD moves forward with a plan to create "better" housing.

The case of New Orleans highlights a series of points that warrant serious consideration. First, a policy should not be deemed to affirmatively further fair housing if its effect is to destroy families and communities of color. Second, a determination of whether a plan furthers fair housing must include an analysis of where residents who cannot return to the redeveloped site can reside. This analysis should include any evidence of discrimination in the relevant housing market. It should also consider other evidence of a jurisdiction's actions that limit housing opportunities for people of color, including development plans that depend upon removal and displacement of low-income communities of color. (Can a PGA Tour appropriate golf course and a multi-million dollar movie studio exist in the sixth poorest city in America?) Third, affirmatively furthering fair housing must include a plan beyond merely issuing vouchers in light of an insufficient affordable housing stock and discriminatory rental practices against African Americans in the housing market.

Dispersing and displacing low-income African Americans in the name of fair housing is not what the Fair Housing Act stands for. To think otherwise presupposes that the only way to promote the revitalization of communities is if fewer African Americans, or people of color, live in a neighborhood. While integration is one way to effectuate fair housing, the government has operated as if it is the only way, and as a result has undermined the core purpose of the Fair Housing Act. To permit the wholesale removal of communities of color under the guise of fair housing abdicates any governmental responsibility for

ending structural racism. It permits the dispersal of families of color as a quick fix, and ignores the more complex issues of markets and governments that act inefficiently, and inequitably, in instances where people of color are in the majority. Fair housing policies should not be fashioned as a mandate to deconcentrate and “integrate” at all costs, but must also include reform directed toward community development in depressed, Black neighborhoods.

### CONCLUSION

The fate of New Orleans’ public housing after Hurricane Katrina demonstrates that the integration imperative that has been read into the Fair Housing Act must be revisited and revised. In this sense, post-Katrina New Orleans provides an opportunity, but not in the manner in which the government has pursued. It is an opportunity to recapture the meaning of fair housing to include community restoration, community enrichment, and spatial equality. If fair housing had been understood to encompass these principles in the aftermath of Hurricane Katrina, the fate of New Orleans’ public housing would have been very different. Instead of habitable housing left boarded up and slated for demolition while a plan is devised to drastically reduce the number of public housing available in the city, units would have been brought back online, families would have returned from displacement, and social services and other community betterment initiatives would have been devised with the input and participation of public housing residents.

The story of New Orleans public housing should be of concern to all Americans. In the name of a disaster, should the government be permitted to seize the moment to exclude those persons who are seen in some quarters to be “unwanted?” Even more disconcerting, should the goal of integration be used to dismantle communities of color and their voting power, not only to move them elsewhere within their city but to move them to other parts of the country altogether? The government’s obligation to affirmatively further fair housing should ensure housing opportunities through mechanisms that are appropriate to the circumstances. In the case of New Orleans, these powers were used to deliver another blow to the families most devastated by Hurricane Katrina.

# **EXHIBIT B**



## **C.J. Peete Housing Development**

### **Pre- Hurricane Status**

The C.J. Peete site consists of two public housing sites with a total of 1,403 units, including 723 original units at LA1-2 and 680 units at LA1-10. Over the past six years the 680 units at LA1-10 were demolished, leaving a cleared site that is ready for new development. Prior to the hurricane, HUD had approved demolition of 202 of the 723 units located at LA1-2. Many of the remaining 521 units are under state and/or federal protection for historic preservation.

Only 144 of the remaining 723 units were occupied at the time Hurricane Katrina struck in August 2005. The remaining units were long-term vacancies.

C.J. Peete was selected as the next HANO site for rehabilitation. HANO had contracted with Perez APC to develop a land use plan for the entire CJ Peete site, with preliminary plans taking into consideration the restrictions of the Memorandum of Agreement with the SHPO and without these restrictions. These plans were nearing completion in August 2005.

### **Hurricane Damage**

As shown in the table below, C.J. Peete received moderate damage from Hurricane Katrina.

	Units	Post Storm Condition
Housing Units	723	Exterior damage: roofs; windows and doors; flashing and trim; excessive debris, automobiles, and garbage; damage to overhead electrical lines Interior damage is minimal
Community Center	NA	Flooded to approximate 18-inches Interior flood damage throughout

### **Post-Hurricane Status**

Since the hurricane, the vacant property at C.J. Peete has become a prime location for retail and residential development. On a portion of the vacant property, HANO plans to develop 100 affordable housing units. In April 2006 HANO submitted two LIHTC applications, each for 50 units. One of the sites will also include a community center.

HANO has selected an architect for the site and is finalizing contract negotiations. Following execution of this contract, the architect will work with the SHPO to eliminate or reduce the restrictions placed on HANO by the MOA with SHPO. Once this is done,

# **EXHIBIT C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA  
2006 JUN 27 AM 10:04  
LORETTA G. WHYTE  
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YOLANDA ANDERSON, GILDA BURBANK,  
ALLEN HARRIS, DONNA JOHNNIGAN,  
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SYLVIA MOTEN, EMELDA PAUL, HILDA  
JOHNSON, CYNTHIA BELL, LOLITA GIBSON,  
NICOLE BANKS, JUDITH WATSON, GLORIA  
WILLIAMS, MARY ANN WRIGHT, CATRICE  
DOUCET, LINDA DeGRUY, and KIM PAUL, in  
their own right and as representatives of all  
similarly situated displaced New Orleans,  
Louisiana public housing residents,

PLAINTIFFS

VERSUS

ALPHONSO JACKSON, Secretary of the United  
States Department of Housing and Urban  
Development; U.S DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT; HOUSING  
AUTHORITY OF NEW ORLEANS; C. DONALD  
BABERS, Board of Commissioners, Housing  
Authority of New Orleans; WILLIAM C.  
THORSON, Executive Administrator Appointing  
Authority Housing Authority of New Orleans; and  
each individual defendant in his official capacity,

DEFENDANTS

CIVIL ACTION NO.

~~06-3298~~

SECT. B MAG5

CLASS ACTION  
FOR INJUNCTIVE RELIEF,  
DECLARATORY RELIEF,  
AND DAMAGES

CLASS ACTION COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF,  
AND DAMAGES

Fee 350.00  
Process  
X Doc  
Doc No.

## **INTRODUCTION**

1. On August 29, 2005, Hurricane Katrina hit New Orleans causing the breach of several levees and the evacuation of hundreds of thousands of residents. Of the 354,045 residents who lived in damaged areas of New Orleans, 75 percent were African-American and more than 29 percent were poor.<sup>1</sup> Almost ten months later, a majority of these residents remain displaced. Most residents cannot return because of a shortage of housing due to a loss of approximately half of all rental housing and an increase in demand; since the storm, rental rates have increased 25-30% in New Orleans. Despite this massive shortage of housing, particularly affordable housing, the Housing Authority of New Orleans (HANO) has taken virtually no steps to repair housing units that could bring back many of the 5,146 displaced, predominantly African-American families that resided in public housing. Instead of moving quickly to re-open habitable units and make repairs where necessary, for the most part, HANO boarded up units. Most recently, the U.S. Department of Housing and Urban Development (HUD) made clear that these families would not be able to return anytime soon when it announced its plan to demolish 5,000 public housing units.

2. By failing to reopen housing units that were undamaged by Hurricane Katrina, failing to repair other units, and declaring that most of the existing public housing stock in New Orleans would be demolished, HANO and HUD (Defendants) are violating their obligation to provide non-discriminatory access to safe, affordable housing for low-income families and breaching their contractual commitments and statutory obligations to public housing residents of New Orleans. Their actions and inactions will instead

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<sup>1</sup> JOHN LOGAN, THE IMPACT OF RACE AND CLASS IN STORM DAMAGED NEIGHBORHOODS 7, 15 (2006), available at [www.s4.brown.edu/Katrina/report.pdf](http://www.s4.brown.edu/Katrina/report.pdf).

effectively exclude thousands of low-income African-American families from the city. Further, Defendant HUD has failed to meet its obligations to preserve, to the extent possible, all public housing in areas affected by Hurricanes Katrina or Rita.<sup>2</sup>

3. This action is brought on behalf of the class of individual African-Americans who, before Hurricane Katrina, resided in public housing ("Plaintiffs") managed by Defendants. As a result of the devastation wrought by Hurricane Katrina, Plaintiffs were displaced from their public housing units and currently reside elsewhere or have returned or attempted to return to their public housing unit with or without Defendants' authorization. Plaintiffs want to return to their homes and to New Orleans.

4. For many years, Defendants have squeezed low-income African-American families out of public housing in New Orleans by reducing the number of public housing units from over 13,000 to approximately 7,000. Their post-Hurricane Katrina actions have exacerbated that improper conduct.

5. After Hurricane Katrina, Defendant HANO conducted surveys of public housing residents. It reported that of those surveyed, 60 percent of residents intend to return. Pre-Katrina, more than 5,100 families resided in New Orleans' public housing developments, yet Defendants intend to reopen only approximately 2,000 apartments. To date, only about 880 families have been permitted to return. Most will be unable to do so. Plaintiffs, who have been unable to return to their units, linger in uncertainty about the fate of their homes and their lives. As a result of defendants' actions, many low-income families, who are disproportionately African American, have been prohibited from returning to their homes or have returned and are living in their units in substandard conditions.

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<sup>2</sup> Act of Dec. 30, 2005, 109 P.L. 148; 119 Stat. 2680.

6. Public statements of Defendant Alphonso Jackson, the Secretary of the U.S. Department of Housing and Urban Development, and other elected officials suggest defendants' inaction and needless delay in repairing and reopening New Orleans public housing development are based on racial animus and a clear intention to prohibit the return of many low-income African-American families.

7. On Sept. 29, 2005, Secretary Jackson, who is charged with the development of a public housing plan for New Orleans and for not only enforcement of fair housing opportunities but also furthering fair housing in the use of federal funds, stated that post-Katrina New Orleans "is not going to be as black as it was for a long time, if ever again."<sup>3</sup> On April 24, 2006, Defendant Jackson further stated that "[o]nly the best [public housing] residents should return. Those who paid rent on time, those who held a job and those who worked."<sup>4</sup>

8. Other public officials have followed Secretary Jackson's lead. On February 20, 2006, New Orleans City Council President Oliver Thomas stated "[w]e don't need soap opera watchers all day," and that if displaced residents want to come back and want to live in public housing, they better want to work.<sup>5</sup> Further, after the hurricane Louisiana Congressman Richard Baker (R-LA) said, "[w]e finally cleaned up public housing in New Orleans. We couldn't do it, but God did."<sup>6</sup>

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<sup>3</sup> Becky Bowman et al., *Hurricane Rita: The Aftermath; Population Shift*, THE HOUSTON CHRONICLE, Sept. 29, 2005, at B1.

<sup>4</sup> Bill Walsh, *Official blunt on Public Housing*, THE TIMES PICAYUNE, Apr. 25, 2006, available at <http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-5/1145947501313590.xml>.

<sup>5</sup> Martin Savidge, *What's next for Public Housing in New Orleans?*, available at <http://www.msnbc.msn.com/id/11485681/>.

<sup>6</sup> Charles Babington, *Some GOP Legislators Hit Jarring Notes in Addressing Katrina*, THE WASHINGTON POST, Sept. 10, 2005, at A04, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/09/AR2005090901930.html>.

9. After Hurricane Katrina, Defendants suggested that many public housing units were salvageable by reporting their intent to clean and repair units at the following public housing developments: Iberville, C.J. Peete, B.W. Cooper, and Lafitte. Public housing residents continued to hope for the best as Defendants delayed the promised clean up and repair efforts. Plaintiffs' fears, however, became reality when on June 14, 2006, Defendant HUD announced that it would demolish more than 5,000 public housing apartments—the St. Bernard, C. J. Peete, B. W. Cooper and Lafitte housing developments—and replace them with mixed-income developments. The demolition, scheduled to begin over the next several months, would be the largest demolition in the City's history.<sup>7</sup> It would effectively deprive thousands of public housing families of the ability to return to New Orleans, without hearing, input, or any due process protection.

10. Defendants' discriminatory policies and practices have been carried out under the direction, and with the full consent, knowledge, encouragement, and ratification of the Defendants' highest officials. Defendants' discriminatory policies and practices have been maintained intentionally, maliciously, and with willful, callous, wanton, and reckless disregard for plaintiffs' federally protected rights.

11. Defendants' actions, inactions and plan to demolish 5,000 public housing units, have and will have an adverse impact on African-American residents of New Orleans who want to return but due to Defendants' actions and inactions will be excluded from the City, in violation of the Fair Housing Act, 42 U.S.C. § 3604 *et seq.* Furthermore, Defendants' statements, their purposeful inaction, and their stated intent to demolish public housing make clear Defendants' intent to purposefully reduce the

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<sup>7</sup> Susan Saulny, *5,000 Public Housing Units in New Orleans Are To Be Razed*, N.Y. TIMES, June 15, 2006, at A16.

number of low-income, African-American residents of New Orleans, in violation of the Fair Housing Act, 42 U.S.C. § 3604 *et seq.* Plaintiffs bring this action against Defendants for temporary, preliminary, and permanent injunctive relief, a declaratory judgment, and damages for discrimination on the basis of race in the rental of housing. Plaintiffs request that the Court enjoin Defendants from demolishing any public housing properties in New Orleans pending resolution of Plaintiffs' claims on the merits.

12. Defendants' actions or inactions have further denied Plaintiffs' their rights under the Fifth and Fourteenth Amendments to the U.S. Constitution and constitute an actual or de facto demolition for which Plaintiffs are entitled to procedural relief pursuant to the U.S. Housing Act of 1937, 42 U.S.C. § 1437p(a)(3). In addition, Defendants have constructively evicted Plaintiffs and breached plaintiffs' leases in violation of state statutory and common law. Finally, Defendants' actions constitute violations of international law.

13. As a direct and proximate result of Defendants' discriminatory policies and practices, Plaintiffs have suffered, and in the future will continue to suffer, economic loss, humiliation, embarrassment, and emotional distress. Plaintiffs and the class members who they seek to represent bring claims against Defendants to require that they allow Plaintiffs to return to apartments that sustained little or no damage, repair public housing developments as soon as practicable, and permit residents to return to their public housing unit and rebuild their lives.



### **JURISDICTION AND VENUE**

14. This Court has jurisdiction of the claims asserted in this complaint pursuant to 28 U.S.C. §§ 1331, 1343 and 1367. Plaintiffs' action for injunctive relief and damages is authorized under 28 U.S.C. § 2201 and Federal Rules of Civil Procedure 8, 57, and 65.

15. Venue is proper in this district pursuant to 28 U.S.C. § 1391, in that a substantial part of the events giving rise to this action occurred in this district, a substantial part of property that is the subject of the action is situated in this district, and most of the Defendants may be found in this district.

### **PARTIES**

#### **A. PLAINTIFFS**

16. Plaintiffs are African-American citizens of the United States who as of August 29, 2005 resided in public housing developments in New Orleans, Louisiana, pursuant to written leases, and were involuntarily displaced as a result of Hurricane Katrina. Plaintiffs wish to return to their public housing residences, which are permanent, affordable housing units within the community of their choice. They have been unable, however, to do so because Defendants HANO and HUD have unlawfully prevented their return by approving the demolition of their apartments without consultation with the Plaintiffs and/or delaying or failing to make needed repairs or rebuild damaged properties. The named Plaintiffs bring this action on their own behalf and as representatives for a class of all similarly situated African-American public housing residents.

17. Plaintiff **YOLANDA ANDERSON** is an African-American citizen of the United States. Prior to Hurricane Katrina, she had leased an apartment at HANO's C.J. Peete public housing development.

18. Ms. Anderson lived in the C.J. Peete development for approximately three (3) years but was displaced after the storm and lives temporarily in Atlanta, Georgia. She visited her apartment at the C.J. Peete public housing development and found some flood damage and mildew. Additionally, her home was vandalized and some of her belongings stolen. Ms. Anderson wants to move back into her apartment because she was born and raised in New Orleans, and her apartment is affordable and accessible to public transportation. Defendants prevented her from permanently returning, however, by failing to repair and clean her home, and supply electricity, running water, and a working heater, and by authorizing the demolition of the housing development.

19. Plaintiff **GILDA BURBANK** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased an apartment at HANO's St. Bernard public housing development.

20. Ms. Burbank lived in the St. Bernard housing development for approximately thirty (30) years, and she is currently a resident council member. She was displaced after the storm and lives temporarily in Houston, Texas. Ms. Burbank visited her apartment at the St. Bernard public housing development and found flood damage, mold, and mildew. She wants to move back into her apartment because it is affordable. Defendants prevented her from moving in permanently, however, by failing to repair the damage, and to supply electricity, running water, and a working heater, and by authorizing the demolition of the housing development.

21. Plaintiff **ALLEN HARRIS** is an African-American citizen of the United States. Prior to Hurricane Katrina, he leased an apartment at HANO's C.J. Peete public housing development.

22. Mr. Harris lived in the C.J. Peete development for approximately fifty (50) years. He was displaced after the storm and lived in numerous locations. Currently, he lives with family in New Orleans. He visited his apartment at the C.J. Peete public housing development and found minimal damage. Mr. Harris wants to move back into his apartment because it is located in a close-knit community and is affordable. Defendants prevented him from returning permanently by failing to make repairs, supply electricity, running water, and a working heater in his apartment and by authorizing the demolition of the development.

23. Plaintiff **DONNA JOHNIGAN** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased an apartment at HANO's B.W. Cooper public housing development. Ms. Johnigan lived there for approximately thirty (30) years and currently serves as the vice president of programs of the resident council.

24. Ms. Johnigan lived in the B.W. Cooper for approximately thirty (30) years, but she was displaced after Hurricane Katrina and lives temporarily in Houston, Texas. She visited her apartment at the B.W. Cooper public housing development and found flood damage and mold. Ms. Johnigan wants to move back into her apartment because it is affordable. Defendants prevented her from moving in permanently, however, by failing to repair the damages, and by authorizing the demolition of the housing development.

25. Plaintiff **ODESSIA LEWIS** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased an apartment at HANO's Lafitte public housing development.

26. Ms. Lewis lived in the Lafitte housing development for approximately eleven (11) years. She was displaced after the storm and lives temporarily in Atlantic Beach, Florida. She visited her apartment at the LaFitte public housing development on several occasions and found flood damage, mold and mildew. The flooding destroyed all of her belongings. She wants to move back into her apartment because it is affordable. Defendants prevented her from permanently moving in by failing to repair the damaged apartment, and to supply electricity, running water, and a working heater, and by authorizing the demolition of the housing development.

27. Plaintiff **EMELDA MAY** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased an apartment at HANO's C.J. Peete public housing development.

28. Ms. May lived in the C.J. Peete development for approximately forty (40) years. She was displaced after the storm and is living temporarily in Breaux Bridge, Louisiana. She visited her apartment at the C.J. Peete and found minimal damage. After her initial visit, Ms. May's home was vandalized and some of her belongings stolen. Ms. May wants to move back into her apartment because it is affordable and accessible to public transportation. Defendants prevented her from returning permanently, however, by failing to supply electricity, running water, and a working heater in her apartment and by authorizing the demolition of the development.

29. Plaintiff **SYLVIA MOTEN** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased an apartment at HANO's C.J. Peete public housing development.

30. Ms. Moten lived in the C.J. Peete development for approximately sixteen (16) years. She was displaced as a result of Hurricane Katrina and lives temporarily in Baton Rouge, Louisiana. She visited her apartment at C.J. Peete and found minimal flood damage and mold. Ms. Moten wants to move back into her apartment because it is affordable and accessible to public transportation. Defendants prevented her from returning permanently, however, by failing to make the necessary repairs to her apartment, and by not supplying electricity, running water, and a working heater, and by authorizing the demolition of the housing development.

31. Plaintiff **EMELDA PAUL** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased an apartment at HANO's Lafitte public housing development.

32. Ms. Paul lived in the Lafitte housing development for approximately forty (40) years and currently serves as President of the Lafitte resident council. She was displaced after Hurricane Katrina and lives temporarily in a Maricopa, Arizona. She visited her apartment at the Lafitte development and found minor flood damage, mold and mildew. She wants to move back into her apartment because she was born and raised in New Orleans and her apartment is affordable. Defendants prevented Ms. Paul's return by failing to repair the damaged apartment, and to supply electricity, running water, and a working heater, and by authorizing the demolition of the housing development.

33. Plaintiff **HILDA JOHNSON** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased an apartment at HANO's C.J. Peete public housing development.

34. Ms. Johnson lived in the C.J. Peete development for approximately forty (40) years. She was displaced after Hurricane Katrina and is currently homeless, living with various friends in different locations. She has visited her apartment at the C.J. Peete development frequently and found water damage to her ceiling and tiles, and mold. Ms. Johnson would like to return to her home. She has no place else to go. Defendants prevented her from moving in permanently by failing to make needed repairs, and by authorizing the demolition of the housing development

35. Plaintiff **CYNTHIA BELL** is an African-American citizen of the United States. Prior to Hurricane Katrina she leased an apartment at HANO's St. Bernard public housing development.

36. Ms. Bell has lived in the St. Bernard housing development for approximately five (5) years. She was displaced after the Hurricane is living temporarily with family in New Orleans, Louisiana. She visited her apartment and found flood and wind damage. Ms. Bell would like to return permanently to her apartment, but Defendants have prevented her from moving in by failing to make needed repairs, and by authorizing the demolition of the housing development.

37. Plaintiff **LOLITA GIBSON** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased an apartment at HANO's St. Bernard public housing development.

38. Ms. Gibson lived in the St. Bernard housing development for approximately forty (40) years. She was displaced after Hurricane Katrina and is living temporarily in Houston, Texas. She was allowed to visit her apartment and found flood and wind damage and mold. Ms. Gibson would like to return to her apartment, but Defendants have prevented her from moving in permanently by failing to make needed repairs, and by authorizing the demolition of the housing development.

39. Plaintiff **NICOLE BANKS** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased a townhouse at HANO's Florida public housing development.

40. Ms. Banks lived in the Florida housing development for approximately twenty-nine (29) years. She was displaced after Hurricane Katrina and is living in temporary housing in New Orleans. Her townhouse at the Florida development sustained flood damage. She would like to return to the Florida apartment because it is in a safe location where she can raise her children.

41. Plaintiff **JUDITH WATSON** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased an apartment at HANO's B.W. Cooper public housing development.

42. Ms. Watson has lived in the B.W. Cooper development for approximately thirty-five (35) years and currently serves as the vice president of the resident council. She was displaced after the storm and lives temporarily in Baton Rouge, Louisiana. She visited her apartment the B.W. Cooper public housing development and found minimal damage. She wants to move back into her apartment because it is affordable.

Defendants prevented her from moving in permanently, however, by boarding up her apartment, and by authorizing the demolition of the housing development

43. Plaintiff **GLORIA WILLIAMS** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased an apartment at HANO's C.J. Peete public housing development in New Orleans, Louisiana.

44. Ms. Williams has lived in the C.J. Peete development for approximately twenty-two (22) years. She was displaced following the storm and is living temporarily in Algiers, Louisiana. She visited her apartment after the storm and found minimal damage. Ms. Williams wants to move back into her apartment because it is affordable and accessible to public transportation. Defendants prevented her from returning permanently, however, by failing to supply electricity, running water and a working heater in her apartment, and by authorizing the demolition of the housing development.

45. Plaintiff **MARY ANN WRIGHT** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased an apartment at HANO's Lafitte public housing development.

46. Ms. Wright lived in the Lafitte housing development for approximately twenty (20) years. She was displaced after the storm and is living temporarily in Houston, Texas. She visited her apartment at the Lafitte public housing development on several occasions and found minor flood damage, mold and mildew. She would like to move back into her apartment because she was born and raised in New Orleans, it is her home, and her apartment is affordable. Defendants prevented her moving in permanently, however, by failing to make repairs, provide electricity, running water and



a working heater in Ms. Wright's apartment, and by authorizing the demolition of the development.

47. Plaintiff **CATRICE DOUCET** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased an apartment at HANO's Iberville public housing development.

48. Ms. Doucet lived in the Iberville housing development for approximately six (6) months, and was selected as a member of the resident council. She was displaced after the storm and lives temporarily in Marshall, Texas. Ms. Doucet visited her apartment at Iberville and found roof and flood damage, and mold. She wants to move back into her apartment; however, Defendants prevented her from returning permanently by failing to make the needed repairs.

49. Plaintiff **LINDA DeGRUY** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased an apartment at HANO's Iberville public housing development.

50. Ms. DeGruy lived in the Iberville housing development for approximately eight (8) years. She was displaced after the storm and lived temporarily in Houston, Texas. She visited her apartment at Iberville on several occasions and found roof and flood damage and mold. In June of 2006, Ms. DeGruy returned to her Iberville apartment because the cost of utilities in Houston was a financial hardship. She would like to remain in her home; however, Defendants failure to complete needed repairs may force her to leave.

51. Plaintiff **KIM PAUL** is an African-American citizen of the United States. Prior to Hurricane Katrina, she leased an apartment at HANO's Iberville public housing development.

52. Ms. Paul lived in the Iberville housing development for approximately twenty-one (21) years and is currently the president of the resident council. She was displaced after Hurricane Katrina and lived temporarily with a friend in New Orleans. In February of 2006, she was invited by HANO to return to her apartment. Ms. Paul returned to her apartment at the Iberville housing development in March of 2006 and found it in need of repair. She would like to remain in her home; however, Defendants' failure to make needed repairs may force her to leave.

**B. DEFENDANTS**

53. Defendant **ALPHONSO JACKSON** is the Secretary of Defendant **U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**, the federal housing agency responsible for increasing homeownership, supporting community development and increasing access to affordable housing in a nondiscriminatory manner. All powers and functions of Defendant HUD are administered under the supervision and direction of Defendant JACKSON. 42 U.S.C. § 3532. He is sued in his official capacity in connection with actions taken under color of federal law. As Secretary, Defendant JACKSON coordinates federal activities affecting housing and urban development; provides technical assistance and information to state, county, town, village, or other local governments in response to community and metropolitan development problems; and consults and cooperates with state agencies concerning federal and state programs for assisting communities in developing solutions to community and metropolitan

development problems. See 42 U.S.C. § 3532(b). Defendant JACKSON is responsible for implementing the U.S. Housing Act of 1937, 42 U.S.C. § 1437 *et seq.* and its regulations relating to low-income housing assistance to public housing authorities. Defendant JACKSON is also responsible for administrative enforcement of the Fair Housing Act, 42 U.S.C. § 3604 *et seq.* and is obligated to administer housing and urban development activities and programs in a manner that affirmatively furthers fair housing. 42 U.S.C. § 3808(e)(5). As the receiver of Defendant HANO, Defendant Jackson appointed Defendants THORSON and BABERS to their HANO posts.

54. Defendant **HOUSING AUTHORITY OF NEW ORLEANS**, is a public corporation created, pursuant to the Louisiana Housing Authorities Law, LA. REV. STAT. ANN. § 40:381 *et seq.* (2006), to address “a shortage of decent, safe, and sanitary dwelling accommodations . . .” LA. REV. STAT. ANN. § 40:392 (2006). It is responsible for providing safe, decent, affordable housing to low-income citizens by creating and sustaining viable communities and for facilitating resident self-sufficiency and upward mobility. HANO has the authority to “improve, reconstruct, renovate, rehabilitate, . . . manage, own, lease and operate housing, housing projects or developments, or any portions of housing projects or developments, and nonresidential and mixed-use facilities.” LA. REV. STAT. ANN. § 40:436A. In 2002, Defendant HUD placed Defendant HANO in receivership after allegations of mismanagement and money squandering.

55. Defendant **WILLIAM C. THORSON** is the executive administrator of Defendant HANO. He is sued in his official capacity in connection with actions taken under color of state law. Defendant Thorson is responsible for the day-to-day operations of HANO. His responsibilities include employing and supervising HANO's

employees to ensure that the mission of the housing authority is accomplished in an efficient manner. See LA. REV. STAT. ANN. § 40:539C.

56. Defendant **C. DONALD BABERS** is the chairman of the Board of Commissioners of Defendant HANO. He is sued in his official capacity in connection with actions taken under color of state law. The Board of Commissioners is the governing body of Defendant HANO. See LA. REV. STAT. ANN. §§ 40:531 and 40:539. Defendant Babers has the authority to enter into contracts for "services, privileges, works, or facilities for or in connection with its developments or the occupants thereof." See LA. REV. STAT. ANN. § 40:539C(6). He may also enter into agreements for federal financial assistance relating to the development or administration of public housing projects. *Id.*

### **FACTUAL BACKGROUND**

#### **A. PUBLIC HOUSING STOCK BEFORE HURRICANE KATRINA**

57. Amidst allegations of mismanagement and squandering money, in 2002, HUD placed HANO in receivership. After the takeover, the HUD receiver team then began redeveloping five of the City's ten large public housing developments with funding from federal grants under the Homeownership and Opportunity for People Everywhere (HOPE VI) program. Several developments were replaced with mixed-income communities. As a result of this demolition/redevelopment process, hundreds of public housing residents reported that they were forced to relocate to other rental properties without adequate compensation from HUD for housing and relocation costs, causing residents to face mounting housing costs that they were unprepared to pay.<sup>8</sup>

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<sup>8</sup> See *Renfro v. Housing Authority of New Orleans and Catherine Lamberg, Receiver*, Civil Action No. 03-3613 (E.D.L.A. 2003) (Complaint for Declaratory Judgment).

58. Defendants' public housing development effort came to a screeching halt on August 29, 2005, when Hurricane Katrina hit New Orleans, causing its levees to give way and leaving a sea of devastation. When the hurricane struck, public housing residents composed greater than 10 percent of all Orleans Parish residents. Tens of thousands of residents are now displaced.

**B. DEFENDANTS' ACTIONS DISPROPORTIONATELY IMPACT LOW-INCOME AFRICAN-AMERICAN PUBLIC HOUSING RESIDENTS**

59. It is undisputed that Hurricane Katrina had a disproportionate impact on African-American residents of New Orleans. According to U.S. Census data, in 2000, the population of New Orleans was approximately 67 percent African American. Thirty-five percent of the African-American population had incomes below the poverty line.

60. Within the areas damaged by Katrina and the levee breaches, the population was 75 percent African-American. More than 29 percent of the population lived below the poverty line and the median income was \$25,000. Whites constituted only 11 percent of the population living below the poverty line and their median income was \$61,000.<sup>9</sup> It is estimated that if the reconstruction of New Orleans was limited to the population previously residing in areas undamaged by Hurricane Katrina, the city could lose about 50% of its white residents but more than 80% of its African-American residents.<sup>10</sup>

61. Pre-Hurricane Katrina, public housing residents were overwhelmingly African-American. Defendant HANO reported that from February of 2005 to May 31, 2006,

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<sup>9</sup> Logan, *supra* note 1, at 7, 15.

<sup>10</sup> *Id.* at 16.

100% of public housing residents were African-American.<sup>11</sup> The demolition of 5,000 public housing apartments will adversely impact African-Americans and further exclude African-American residents from the city.

**C. DEFENDANTS' CONTRADICTORY POST-KATRINA PROMISES TO REOPEN, REPAIR AND REBUILD PUBLIC HOUSING DEVELOPMENTS**

62. In the months following Hurricane Katrina, HUD failed to undertake meaningful repairs or develop a plan to repair and reopen public housing. On or about June 14, 2006, nearly ten months after the storm, HUD announced its intended plan to demolish all but 2,000 units. Further, HUD issued contradictory statements concerning the future of New Orleans' public housing that suggest that much of the City's public housing is salvageable.

63. Defendants' public housing stock sustained varying degrees of damage – from minor to severe – as a result of the storm and levee breaches. In the months following the storm, approximately 880 public housing families have returned to the Guste, Fischer, and St. Thomas developments.<sup>12</sup>

64. In December of 2005, Congress required that within areas declared a major disaster as a result of Hurricanes Katrina or Rita, HUD preserve all housing that received project-based assistance, to the extent feasible.<sup>13</sup>

65. Initially, Defendants HANO and HUD reported that they intended to clean, repair and open Iberville first, followed by C.J. Peete, a small quadrant of about 300

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<sup>11</sup> New Orleans Housing Authority Residents Characteristics Report 2005-06, *available at* <http://pic.hud.gov/pic/RCRPublic/rcrha.asp>.

<sup>12</sup> Housing Authority of New Orleans Post Katrina Frequently Asked Questions, *available at* <http://www.hano.org/FAQ.pdf> (last visited May 18, 2006).

<sup>13</sup> Act of Dec. 30, 2005, *supra* note 2.

units at B.W. Cooper, and Lafitte.<sup>14</sup> They also allegedly plan to move forward with demolition and redevelopment plans that include building additional units, including homeownership units, at Guste, Fischer, and St. Thomas.<sup>15</sup>

66. Likewise, on February 15, 2006, HUD advised the U.S. Senate that it planned to reopen a quadrant of B.W. Cooper, make repairs at C.J. Peete, and re-occupy units at Iberville (387 units had been cleaned and repaired and an additional 384 units were under contract for cleaning or restoration).<sup>16</sup>

67. On June 14, 2006, without notice to residents or opportunity to be heard, HUD announced that it would demolish more than 5,000 public housing apartments – St. Bernard, C.J. Peete, B.W. Cooper and Lafitte housing developments – in the upcoming months and replace them with mixed-income developments. HUD also announced that it would reopen 1,000 public housing units although it continues to extend the date when that might be accomplished.<sup>17</sup>

68. Notwithstanding Defendants' promises to repair and reopen public housing in New Orleans, they have failed to timely repair developments that need only minor repairs, to mitigate damage that has occurred in recent months, or to prevent further damage.

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> HOUSING AUTHORITY OF NEW ORLEANS, QUESTIONS FOR THE HEARING ON "REBUILDING NEEDS IN KATRINA-IMPACTED AREAS" 3-4 (2006).

<sup>17</sup> Saulny, *supra* note 7.

**D. DEFENDANTS INTENTIONALLY DISCRIMINATE AGAINST LOW-INCOME AFRICAN-AMERICAN PUBLIC HOUSING RESIDENTS BY FAILING TO REOCCUPY AND REPAIR HOUSING UNITS**

69. Based on public statements made by Defendant HUD, Defendants HANO's and HUD's intent to exclude low-income African-American residents from New Orleans is clear.

70. Public statements made by Defendants and supported by other Louisiana officials in reference to low-income African-American public housing residents reveals that their failure to promptly repair and reopen public housing units is motivated by discriminatory intent. Defendant Alphonso Jackson, Secretary of HUD stated on Sept. 29, 2005 that post-Katrina New Orleans "is not going to be as black as it was for a long time, if ever again,"<sup>18</sup> and on April 24, 2006 that "Only the best residents should return. Those who paid rent on time, those who held a job and those who worked."<sup>19</sup>

71. New Orleans City Council President Oliver Thomas stated on February 20, 2006 at a city council meeting that, "We don't need soap opera watchers all day," and that if displaced residents want to come back and want to live in public housing, they better want to work.<sup>20</sup> Likewise, Louisiana Congressman Richard Baker (R-LA) said, after the hurricane, "We finally cleaned up public housing in New Orleans. We couldn't do it, but God did."<sup>21</sup>

**CLASS ACTION ALLEGATIONS**

72. Plaintiffs bring this action in their own right and on behalf of all others similarly situated public housing residents who as of August 29, 2005, resided in Orleans Parish

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<sup>18</sup> Bowman, *supra* note 3.

<sup>19</sup> Walsh, *supra* note 4.

<sup>20</sup> Savidge, *supra* note 5.

<sup>21</sup> Babington, *supra* note 6.



pursuant to leases with HANO, were involuntarily displaced, and desire to return to their public housing units. Plaintiffs seek certification of a class pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

73. Plaintiffs proposed class seeks to represent (a) all African-American citizens who resided in a HANO public housing development on August 29, 2005, were displaced as a result of Hurricane Katrina, and were unable to return permanently to their public housing residence due to Defendants' failure to permit re-occupancy of habitable public housing apartments that sustained little or no damage as a result of the storm ("SUBCLASS A"); (b) all African-American citizens who resided in a HANO public housing development on August 29, 2005, were displaced as a result Hurricane Katrina, and were unable to return permanently to their public housing residence due to Defendants' failure to repair apartments that sustained moderate to severe damage ("SUBCLASS B"); and (c) all African-American citizens who resided in a HANO public housing development August 29, 2005, were displaced due to Hurricane Katrina, have returned to their public housing unit but are living in substandard conditions ("SUBCLASS C").

74. Plaintiffs and the putative class-members had their right to return or to live in a decent affordable housing denied or abridged by the actions, inactions, policies and practices of the Defendants, in violation of federal and state laws.

**A. THIS CASE MEETS EACH REQUIREMENT OF FEDERAL RULE OF CIVIL PROCEDURE 23(A)**

75. **Numerosity.** Class members are so numerous that joinder of all members in a single lawsuit 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 financial means to maintain individual actions.

Further, the individual class members lack the knowledge, sophistication, and financial means to pursue individual litigation. Individual litigation by class members also presents the risk of inconsistent adjudications, resulting in irreconcilable precedents regarding the government's responsibilities in returning public housing residents to their homes.

**76. Commonality.** Common questions of law and fact exist as to all members of the Class. Specifically, each member of the Class has been affected and will continue to be affected by Defendants' rule changes concerning which housing developments will be re-opened and, therefore, who will be homeless. In reaching these decisions, defendants are required to apply applicable federal law, as well as their regulations and standards, in an equitable and impartial manner, forbidding them from discriminating against residents on the basis of race. Defendants' failure to comply with these laws and regulations present common questions of law and fact that will predominate this case.

**77. Typicality.** Plaintiffs' claims are typical of the claims of all class members. Each class member was a resident of New Orleans public housing and was displaced by Hurricane Katrina. Further, each class member suffered housing discrimination on the basis of race due to Defendants' acts and omissions. Likewise, each class member has been victimized by Defendants' arbitrary decisions as to which public housing units they will reopen and which residents they will permit to reoccupy those units.

**78. Adequacy of Representation.** 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. Plaintiffs and the Class have retained counsel with expertise and experience in litigating numerous, major class action cases, including disaster relief cases, and have adequate resources to litigate and protect the interests of the Class.

**B. THIS CASE MEETS EACH REQUIREMENT OF FEDERAL RULE OF CIVIL PROCEDURE 23(b)**

79. The requirements of Federal Rule of Civil Procedure 23(b)(2) are met in that the state laws 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. The requirements of Federal Rule of Civil Procedure 23(b)(3) are met in that the questions of law or fact common to the members of the Class predominate over any questions affecting only individual members. A class action is superior because the interests of the individual class members are the same and it is desirable to have litigation of claims regarding Defendants in this court.

**CLAIMS FOR RELIEF**

**COUNT ONE: VIOLATION OF FAIR HOUSING ACT, 42 U.S.C. § 3604 – DISPARATE IMPACT**

80. Plaintiffs re-allege and incorporate by reference all of the allegations set forth in the preceding paragraphs.

81. Defendants' failure to reopen and repair public housing adversely impacts its public housing residents, all of whom are African-American, in violation of the Fair Housing Act, 42 U.S.C. § 3604(a).

82. Defendants' plan to demolish 5,000 units of public housing adversely impacts African-American residents in violation of the Fair Housing Act, 42 U.S.C. § 3604(a).

83. Defendants' failure to repair New Orleans public housing units has resulted in the constructive eviction of African-American public housing residents who have returned to their units, in violation of 42 U.S.C. § 3604(a).

84. Defendants have discriminated in the provision of services to public housing residents, in violation of 42 U.S.C. § 3604(b).

85. Defendants have made discriminatory statements about the availability of housing, in violation of 42 U.S.C. § 3604(d).

86. The practices of Defendants, as alleged herein, actually adversely affect the low-income, African-American residents of public housing in New Orleans, as officials predicted.

**COUNT TWO: VIOLATION OF FAIR HOUSING ACT, 42 U.S.C. § 3604 – DISPARATE TREATMENT**

87. Plaintiffs re-allege and incorporate by reference all of the allegations set forth in the preceding paragraphs.

88. Defendants' conduct and statements, as alleged herein, constitute disparate treatment under the Fair Housing Act, 42 U.S.C. § 3604(a) and (b). Plaintiffs are African-American, a protected class under the Fair Housing Act, and have suffered real injury. Defendants' statements create a reasonable inference that race was a significant factor in post-Katrina decisions affecting public housing in New Orleans.

89. Defendants' failure to repair New Orleans public housing units has resulted in the constructive eviction of African-American public housing residents who have returned to their units, in violation of 42 U.S.C. § 3604.

**COUNT THREE: VIOLATION OF FAIR HOUSING ACT, 42 U.S.C. § 3608 (ADMINISTRATIVE PROCEDURES ACT, 5 U.S.C. § 702 ET SEQ.)**

90. Plaintiffs re-allege and incorporate by reference all of the allegations set forth in the preceding paragraphs.

91. Defendants have violated § 3608 of the Fair Housing Act, which requires all agencies to administer their programs and activities related to housing and urban development in a manner affirmatively to further the purposes of the Fair Housing Act. 42 U.S.C. § 3608.

92. Defendants' breach of their affirmative duty to further fair housing goals in violation of the Administrative Procedures Act, which is enforceable through 5 U.S.C. § 702 *et seq.*

**COUNT FOUR: U.S. HOUSING ACT OF 1937 – DEMOLITION OF PUBLIC HOUSING, 42 U.S.C. § 1437p (ADMINISTRATIVE PROCEDURES ACT, 5 U.S.C. § 702 ET SEQ., AND 42 U.S.C. § 1983)**

93. Plaintiffs re-allege and incorporate by reference all of the allegations set forth in the preceding paragraphs.

94. Defendants have announced their intent to demolish 5,000 units of public housing. Further, through their willful neglect of the condition of public housing since Hurricane Katrina, Defendants have effected a de facto demolition of such housing.

95. Under the U.S. Housing Act of 1937, 42 U.S.C. § 1437p(a)(3), Defendants must undertake certain procedures prior to demolishing a public housing development, including consulting with residents.

96. Defendants have failed to confer with residents or otherwise satisfy the requirements set forth in 42 U.S.C. § 1437p(a)(3) that are prerequisites to demolition of a public housing unit, in violation of the Administrative Procedures Act, 5 U.S.C. § 702 *et seq.*, and 42 U.S.C. § 1983.

**COUNT FIVE: CONSTRUCTIVE EVICTION**

97. Plaintiffs re-allege and incorporate by reference all of the allegations set forth in the preceding paragraphs.

98. Plaintiffs have manifested their intent to return and occupy their units. Defendants have, and continue to, constructively evict Plaintiffs by prohibiting Plaintiffs from accessing their rental units. Defendants' action and inaction have caused additional decay, damage, and deterioration of public housing developments.

99. Defendants have failed to restore the public housing units to habitable conditions and have substantially interfered with Plaintiffs' rights as tenants to quiet enjoyment of their property.

**COUNT SIX: BREACH OF CONTRACT**

100. Plaintiffs re-allege and incorporate by reference all of the allegations set forth in the preceding paragraphs.

101. Section VIII of the HANO lease requires the landlord to maintain units "in a condition that is decent, safe, sanitary, and in good repair" and to meet other standards. *See, e.g.,* Exhibit A, Housing Authority of New Orleans, *Residential Lease Agreement: Terms and Conditions* (attached).

102. Under Louisiana Civil Code, the lessor is bound to maintain the leasehold in a condition such as to serve the use for which it was hired and to cause the lessee to

be in peaceable possession of the leasehold during the continuation of the lease. LA. CIV. CODE ANN. art. 2682 (2006).

103. Defendants are in breach of the lease and common and statutory law by failing repair damage to their units resulting from Hurricane Katrina and to restore the premises to a safe, sanitary condition for use intended by the lease. The time period is unreasonable because conditions of units have deteriorated because of Defendants' delay in making the necessary repairs.

**COUNT SEVEN: VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS – EQUAL PROTECTION AND DUE PROCESS (42 U.S.C. § 1983)**

104. Plaintiffs re-allege and incorporate by reference all of the allegations set forth in the preceding paragraphs.

105. By intentionally failing to reopen public housing units, whose residents are African-American, Defendants are in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. U.S. CONST. amend. XIV, § 1.

106. By denying Plaintiffs the ability to return to their public housing units, Defendant HANO are depriving residents of their right to property without notice or hearing, in violation of the Due Process Clause of the Fourteenth Amendment. U.S. CONST. amend. XIV, § 1.

107. By intentionally failing to reopen public housing units, whose residents are African-American, Defendants are in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. U.S. CONST. amend. V.

108. By denying Plaintiffs the ability to return to their public housing units, Defendant HUD are depriving residents of their right to property, in violation of the Due Process Clause of the Fifth Amendment. U.S. CONST. amend. V.

109. By reason of the foregoing, Defendants, acting under color of state law, have deprived Plaintiffs, their members, and members of the proposed class of the rights, privileges, and immunities secured to them under the Fifth and Fourteenth Amendments to the United States Constitution and protected under 42 U.S.C. § 1983.

110. Plaintiffs have no adequate remedy at law for such deprivation of their rights, privileges, and immunities.

**COUNT EIGHT: VIOLATION OF INTERNATIONAL LAW**

111. Plaintiffs re-allege and reincorporate by reference all of the allegations set forth in the preceding paragraphs.

112. Defendants' actions and inactions also violate international law as it applies to internally displaced persons. According to international law, the victims of Katrina are "internally displaced persons" because they were displaced within their own country as a result of natural disaster.

113. Principle 28 of the Guiding Principles on Internal Displacement requires that the U.S. government recognize the human right of displaced people to return home. The United States must "allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residents . . . Such authorities shall facilitate the reintegration of returned or resettled internally displaced persons. Special efforts should be made to ensure the full participation of internally



displaced persons in the planning and management of their return or resettlement and reintegration.”

**JURY DEMAND**

114. Plaintiff hereby demands a trial by jury on all issues to which they are so entitled.

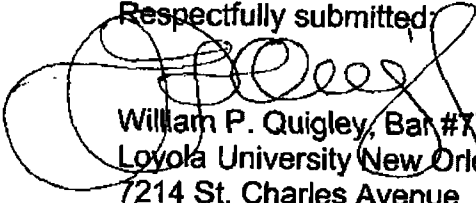
**WHEREFORE, PREMISES CONSIDERED**, Plaintiffs herein prays after due proceedings are held, they be awarded the following:

1. Certification of a class, pursuant to Fed. R. Civ. P. 23(b)(2) and Fed. R. Civ. P. 23(b)(3), consisting of all public housing residents who as of August 29, 2005, resided in Orleans Parish and were displaced, and desire to return to their public housing units;
2. Issue appropriate injunctive relief to prevent Defendants from illegally demolishing any public housing apartments in New Orleans;
3. Declaratory judgment that Defendants' failure to reopen, repair, and replace housing units, intentionally discriminate and adversely impact African-American lower income housing residents ability return to their units in violation of The Fair Housing Act, 42 U.S.C. §§ 3604 and 3608(d) and de facto demolition requirements, 42 U.S.C. § 1437p;
4. Declaration that Defendants have constructively evicted plaintiffs and breach their public housing lease in violation of state statutory and common law;
5. Declaration that Defendants' failure to reopen public housing has denied Plaintiffs and class members equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution;

6. Entrance of a permanent injunction directing Defendants and their directors, officers, agents, and employees to take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;
7. Order to Defendants to cease discriminating against African-American public housing residents;
8. Order to Defendants to reopen habitable public housing units;
9. Order to Defendants to make all needed repairs as soon as practicable so that residents can return;
10. Award of compensatory damages to the individual plaintiffs in an amount to be determined by a jury that would fully compensate them for the economic loss, humiliation, embarrassment, and emotional distress that has been caused by the conduct of the Defendants alleged herein;
11. Award of costs and disbursements associated with the filing and maintenance of this action pursuant to 42 U.S.C. §§ 1988 and 3613(c)(2), including an award of reasonable attorneys' fees; and
12. Grant of such relief that may be allowed by law or in equity.

Date: June 27, 2006

Respectfully submitted,



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\* Counsel will move to appear before this Court *pro hac vice*.

# **EXHIBIT D**

**UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF LOUISIANA**

YOLANDA ANDERSON, et al.,

Plaintiffs,

v.

ALPHONSO JACKSON, et al.,

Defendants.

CIVIL ACTION NO. 06-3298

SECTION "B"

JUDGE LEMELLE

MAGISTRATE 5

MAG. CHASEZ

**DECLARATION OF JOHN E. FERNANDEZ**

I, John E. Fernandez, declare as follows:

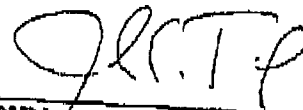
1. I am an Associate Professor of Architecture, faculty member of the Department of Architecture, Building Technology Program, at the Massachusetts Institute of Technology. My expertise is in the lifecycle performance and composition of materials used for buildings. I have been conducting research, publishing and teaching at MIT since 1999. I am a registered architect in the State of New York and have a Bachelor Degree from MIT (1985, Department of Architecture) and a Master of Architecture from Princeton University (1989, School of Architecture).
2. These preliminary findings are the result of my assessment of public housing units in New Orleans conducted during the five day period, October 16 to 20, 2006. My consultant services in the production of this assessment were commissioned by the Plaintiff in the case of Anderson, et al. v. Jackson, et al.
3. The intention of the survey was to identify damage to both the buildings and individual residential units that can be directly attributable to Hurricane Katrina. The focus of my survey was the assessment of the physical structure and shell of the buildings and the interior conditions of the residential units themselves.
4. I conducted a visual survey of 140 units in four public housing projects: Lafitte, C.J. Peto, B.W. Copper, and St. Bernard.
5. My inspection and assessment found that no structural or nonstructural damage was found that would reasonably warrant any cost-effective building demolitions. While I found a range of Katrina-related damage to these buildings, I did not find any conditions in which the integrity of the structure and exterior envelope of the buildings or the interior conditions of residential units themselves could not be brought to safe and livable conditions with relatively minor investment.

6. I also found that there was only a minimum use of cellulose-based materials (wood in rough openings and baseboards and paper in the rare use of gypsum wall board for example). This lack of organic material significantly aided in the very low incidence of moisture retention in the walls and floors of the buildings.
7. LaFitte: I found damage at LaFitte to be minor and consisted primarily of damage to windows and doors from high winds and interior damage from first floor flooding. I found no damage to the structure. The brick masonry is in good condition, showing no signs of Katrina-related damage. Roof damage in several buildings can be easily repaired. Many units only require thorough cleaning to achieve safe and livable conditions. Several units I inspected are essentially in "move-in" condition.
8. C.J. Pete: I found the foundation, brick masonry wall and roofs of buildings at C.J. Pete to be substantially intact and recoverable. Despite missing windows and the many holes in the roof, I did not see widespread water damage to units within. Many units are in good condition. Several I inspected are essentially in "move-in" condition, upon thorough cleaning and some repair to windows. Most interior surfaces of units require only minor plaster patching, baseboard replacement and painting. However, vandalism and theft is apparent and the buildings need to be secured to prevent further damage.
9. B.W. Cooper: My inspection of B.W. Cooper shows that these buildings resisted damage from Katrina quite well. I found the foundation, structure, exterior wall and roof to be substantially intact. The units experienced only minor damage commensurate with the level of flooding in the interior. In first floor units damage from flooding requires replacement of portions of flooring, wood baseboards, plaster walls, electrical sockets and wiring to achieve a safe and livable condition. In upper units, minor repairs and thorough cleaning alone is required.
10. St. Bernard: I found the foundation and brick masonry of St. Bernard to be in good condition. However, the roofs of many buildings are damaged and are resulting in water entering the units below. This damage can be easily repaired. First floor units that were flooded require renovation to replace portions of baseboards, plaster walls, ceilings, and electrical wiring. I found second and third floor units to be in good condition. Several of these units were in very good "move-in" condition, requiring only a thorough cleaning. Those with water damage from above require some replacement of ceiling and flooring materials.
11. Preliminary general conclusions that pertain to all four housing projects can be arrived at because of the following determining factors: all four projects were constructed of essentially the same materials in the structural and nonstructural portions of the buildings, all four projects were similarly planned in long blocks of units with interspersed courtyards, and damage to units in all projects was primarily dependent on the presence of flooding in the unit.
12. Therefore, the general conclusions are: demolition of any of the buildings of these four projects is not supported by the evidence of the survey, replacement of these buildings

with contemporary construction would yield buildings of lower quality and shorter lifetime duration, the original construction methods and materials of these projects are far superior in their resistance to hurricane conditions than typical new construction, and with renovation and regular maintenance, the lifetimes of the buildings in all four projects promise decades of continued service that may be extended indefinitely.

I declare under penalty of perjury, and pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed on October 23, 2006



JOHN E. FERNANDEZ  
Associate Professor  
Massachusetts Institute of Technology

# **EXHIBIT E**





William C. Thorson  
08/04/2006 02:26 PM

To: Jeffrey Riddell/PIH/HHQ/HUD@HUD  
cc: Dominique G. Blom/PIH/HHQ/HUD@HUD, C. Donald Babers/FPM/FTW/HUD@HUD, Justin R. Ormsby/PIH/FTW/HUD@HUD  
Subject: Re: working draft of talking points

I think we want to attack this more aggressively.

Reac inspections are as follows: 0 out of 100 post Katrina, 33 out of 100 in 2005 and 48 out of 100 in 2003. Not sure why there was not score in 2004.

I think as we move forward we need to use this empirical data to our advantage. Justin: Please check with Raymond to find out if it had Lead. That would be an important fact but don't want to say it without evidence. Also, we might want to take photos of the worst of the worst parts, particularly the interior, mold, peeling paint, old broken down kitchens. Pictures are worth a 1,000 words. Also get them copies of the times/picy on the murders at Iberville. the idea being that reopening Lafite as before would create another Iberville.

also be careful on the numbers.....if there are 800 units id it costs 80 million to repair, the per unit cost of repair is relatively low. Shelley may have better, more robust numbers.

Also, check the spelling of Lafitte. Does it have one or 2 "t". Maybe I have been misspelling it all this time, another one of my faults.

As a result, I would be more inclined to say something like:

Why demolish Lafite.

Lafite was built in 1941. it has received little modernization over its lifetime rendering the property significantly obsolete as to its physical condition. HUD inspections have consistently rated this project in the substandard range, eg 0 out of 100 in 2006, 3 out of 100 in 2005 and 48 out of 100 in 2003. Hurricane Katrina made the physical condition of Lafite worse than it was before the hurricane. Prior to Katrina, it is conservatively estimated to cost \$80 million to meet HUD's Uniform Physical Condition Standards, including at least \$20 million just to meet local codes. The property is also substantially obsolete as to design relative to the community. Lafite has over 800 units for low and very low income families on a single site. The social and economic atmosphere, including potential for crime and drugs, is not conducive to a healthy and safe family environment, particularly for children. Were HANO to repair and repopulate Lafite, it would likely be experiencing similar crime related problems as is currently the case in Iberville. As you know, there have been 5 murders during the last 4 months. It is fortunate that no children were the victims of this horror, yet. HANO, HUD and Providence/Enterprise all believe the time to stop warehousing HANO families in substandard conditions is now and that they deserve better.

HANO's redevelopment plan calls for a joint venture that would produce a substantial number of housing units including 900 subsidized units providing replacement housing that HANO can not now provide. In addition, the proposal would likely capitalize on private management prevent some of the the past causes that led to Lafetes deteriorated condition.

Or words to that effect. I am not too fussy.

The rest of the talking points regarding the proposal look fine to me.

Hope that helps.

WCT

HANO 012532

Jeffrey Riddel

Jeffrey Riddel  
08/03/2006 06:37 PM

To: William C. Thorson/PIH/HHQ/HUD@HUD  
cc: Dominique G. Blom/PIH/HHQ/HUD@HUD  
Subject: working draft of talking points

Bill,

FYI - there is a desire to have talking points for HUD/HANO use as well as for the Lafitte partners and City. Attached are my initial thoughts. Please provide any thoughts/suggestions/additions/deletions/etc.

Thanks.

Jeff

Jeffrey H. Riddel  
Acting Director, Office of Capital Improvements  
US HUD  
Office of Public Housing Investments  
451 7th Street, SW, Room 4130  
Washington DC 20410

phone: 202-708-0614, extension 7378  
fax: 202-401-2370

----- Forwarded by Jeffrey Riddel/PIH/HHQ/HUD on 08/03/2006 06:34 PM -----

Jeffrey Riddel  
08/03/2006 06:31 PM

To: ASolts@enterprisecommunity.org  
cc: Stephen C. O'Halloran/PA/HHQ/HUD@HUD, Dominique G.  
Blom/PIH/HHQ/HUD@HUD  
Subject: working draft of talking points

Ali,

As I continue to think about Lafitte, attached below is my working draft of potential talking points, subject to further refinement. We will talk in the morning.

Jeff



Draft Talking Points.doc

Jeffrey H. Riddel  
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HANO 012533

# **EXHIBIT F**

**HOUSING AUTHORITY OF NEW ORLEANS  
RESPONSE TO CONGRESSIONAL FOLLOW-UP QUESTIONS  
AUGUST 5, 2006**

Which public housing residential sites were closed to residents after Katrina, and when, why, and by whom was that decision made? Were evictions required? Which, if any, sites remained open?

All of the public housing residential sites were closed in the immediate aftermath of Katrina. In October 2005 as the City of New Orleans allowed residents to return to certain neighborhoods, HANO had assessed the damages at its properties and determined that the following developments were safe to re-occupy: Fischer Low-Rise; Fischer Senior Village; Guste High-Rise; Guste Low-Rise; River Gardens; and Hendee Homes scattered sites. In January 2005 the Iberville Development was re-opened under a phased, ongoing repair and re-occupancy process. Evictions have not been required.

By residential site, please provide the following information:

The total number of units pre-Katrina.

The number of occupied units at that time.

The date when residents were first allowed to return to units, if closed.

The number of units occupied at the end of each calendar month, since re-entry, or since Katrina, if not vacated. Also provide the anticipated reoccupancy data for the 1000 units to be brought back on line by summer's end.

HANO had 7,379 total units in its pre-Katrina public housing inventory and there were 5,146 occupied public housing units at the time of the storm. The site specific details are provided in the attached Table 1.

Please provide the number of applicants on the Section 8 waiting list as of Katrina's occurrence. As of that date, please provide the total number of vouchers authorized, the number of vouchers issued, and the number of vouchers actually leased-up. Describe the availability of housing units for this program, both pre and post Katrina. Please differentiate the numbers for the project-based program.

At the time of Katrina's occurrence there were 10,873 applicants on HANO's Section 8 waiting list. As of that date, there were 9,400 vouchers authorized, 700 vouchers issued, and 8,981 vouchers leased-up.

Prior to Katrina, the housing market was fairly competitive as many owners began to renovate property due to the opening and issuing of Section 8 vouchers in the period preceding the storm. HANO was experiencing a steady stream of available units as applicants began to present interest in more suitable housing and as the program became increasingly attractive to landlords. As a by-product of the new rent reasonableness system instituted by HANO, owners began to upgrade existing properties with the hope of receiving higher points for amenities thereby leading to potential increases in their asking rents.

The unprecedented level of devastation wrought by Katrina has created a serious shortage of available housing throughout Orleans Parish. Many of the smaller Section 8 landlords lost units that will probably not return to the market any time soon. Also, there was severe damage to multi-family units in the New Orleans area – putting an even bigger strain on the housing supply. Generally, owners are still dealing with insurance issues; lack of professional construction workers; escalated material, storage, and construction costs; as well as longer lengths of time to make repairs. These conditions are adversely affecting the rental housing market and will drastically affect HANO clients' ability to return to the City of New Orleans. In an effort to mitigate, HANO is engaged in a continuum of marketing, housing development, programmatic, policy, and partnership initiatives. HANO also increased the payment standard to 120% of the current fair market rent.

Pre-Katrina there were 523 project-based units under HANO's Section 8 Housing Choice Voucher Program. Post-Katrina, there is currently only one project-based complex opened. This complex is designated for the elderly and there are 30 units under lease at this time.

Please provide a description of HUD's redevelopment plan, by site, to include the amounts and sources of anticipated funding, the number of anticipated public housing families to be accommodated, and a timeline for occupancy.

These items are addressed in the attached Table 2.

As HANO strives to rebuild and support the return of its residents, HANO has prepared an aggressive development plan. This plan takes into account that HANO has limited resources, both in personnel and financial. In order to work within our means, we have developed a strategy that maximizes the use of our available funding from HUD and leverages these funds in the private market. Our focus has been in seeking partners in the tax credit market to identify funding sources and investors that can help fill funding needs for our developments.

With an aggressive plan, HANO faces a number of challenges that must be overcome in order to meet our goals. Some of the most apparent issues relate to the limited personnel capital throughout the State of Louisiana and continual shortages

in materials and supplies. These shortages are further escalated because of the number of both private and public developments, exclusive of HANO, that are underway, in the process of start up, and in planning. This places a serious strain in our ability to not only seek developers with sufficient skilled labor but also to simply have permits processed and approved by local planning and zoning boards. This apparent lack of resources and damages that resulted from the Hurricanes has also forced construction costs to escalate significantly. These escalated costs are placing unforeseen strains on budgets that had been developed prior to the storms.

Additionally, with the number of not-for-profit and governmental agencies applying for the same pot of funds, HANO is not assured that it will be able to obtain all of the funding needed for the planned projects. The schedules provided at Table 2 provide estimates of funding needs as well as current funding shortfalls. HANO is working aggressively to seek these funds however, with the pressure added from other organizations, the amount of funding that HANO will actually be able to receive is in question.

Also, HANO must still build internal resources to be able to manage the planned level of development and its financial resources. The mixed-finance deals are complex in nature and require specific skill sets in order to succeed. HANO is striving to look at various methods of meeting these needs however the Hurricanes that struck during 2005 have depleted not only financial capital from the market but also personnel capital.

HANO will strive to meet its goals in the time frames it has put forward to HUD and the people of New Orleans. HANO wishes to acknowledge that the challenges it faces are monumental and given the level of destruction and the limited resources in the given market, it will be an extremely difficult task to meet.

# **EXHIBIT G**

**The Impact on Low-Income African Americans of the Planned  
Demolition of Public Housing in New Orleans, Louisiana  
and the Redevelopment of the Sites**

**Andrew A. Beveridge, Ph.D.  
Submitted, June 13, 2007**



1) I, Andrew A. Beveridge, am Professor of Sociology at Queens College and the Graduate Center, City University of New York. My primary responsibilities at the college and Graduate Center are teaching statistics and research methods at the graduate and undergraduate level and conducting quantitative statistically based social research. I recently assumed a three year term as chair of the sociology department at Queens. Trained at Yale University, I have been employed in such a capacity since 1973, first at Columbia University until 1981 and since then at Queens College and the Graduate Center of CUNY. My areas of expertise include demography, the statistical and quantitative analysis of social science data sets, most particularly including Census data, survey data and administrative records. I am an expert in the application of GIS technology to the analysis of social patterns. I have analyzed the impact of neighborhood characteristics on educational outcomes and substance use. I have published results from my research. I have listed my scholarly publications on my résumé, which is attached as Exhibit A. Some of these results have been widely disseminated by serving as the basis of articles in the *New York Times*, where I serve as a demographic consultant through an agreement between the CUNY Research Foundation and the *Times*. In addition, I publish a regular column on demographic topics in the *Gotham Gazette*, an on-line publication of Citizens Union. I have served as a consultant to a number of public and private entities, where I provide services related to demographic analysis, in the area of housing, among other things. For instance, I was under contract to the New York State Department of Housing and Community Renewal in 2005 for an analysis of the "Fair Market Rent" (FMR) levels in Long Island, NY.

2) I have testified as an expert in demographic and statistical analysis in the following cases, including affidavit testimony and the filing of reports, among others: *U.S.*

*vs. Port Chester*, (Report, Two Declarations, Deposition and Hearing Testimony, 2002—present, Southern District of New York, cited in preliminary injunction ruling); *Martinez v. Kelly* (Declaration filed in 2<sup>nd</sup> Circuit re: Peremptory Jury Strikes, 2006); *Commonwealth of Virginia vs. Portillo-Chicas* (Affidavit, 2006, Stafford County Virginia); *Commonwealth of Virginia vs. Rogers* (Report and Testimony, 2006, Stafford County Virginia); *US v. Margaret Torres* (Declaration, 2006, Eastern District of Louisiana); *US v. Caldwell* (Declaration, 2006, Eastern District of Louisiana); *U.S. vs. Darryl Green, et al.* (Seven Declaration and Trial Testimony 2004-2006, Eastern Division of the District of Massachusetts, cited in the opinion); *Bergen Lanning Residents in Action, et al. vs. "Randy" Primus, et al.* (Report re: Bergen Square Redevelopment in Camden, NJ. 2005, Camden County, NJ); *Cramer Hill Residents Association, et al. vs. Melvin R "Randy" Primus, et al.* (Report re: Cramer Hill Redevelopment in Camden, NJ. 2005, Camden County, NJ); *People v. Tyisha Taylor* (Trial Testimony, 2005, Syracuse, NY City Court); *Hispanic Alliance vs. Ventnor* (Report, Certification and Testimony at Trial, 2004 to 2005, Atlantic County, NJ); *Citizens in Action, et al. vs. Town of Mount Holly, et al.* (Report and Certification, 2005, Burlington County, NJ); *U.S. v. Lawrence Skiba*, (Affirmation, 2004, Pittsburgh Division, Western District of Pennsylvania); *Connie Forest, et al. vs. Mel Martinez, et al.* (Report re: Brick Towers Demolition in Newark. 2003-2006, Essex County, NJ); *New Rochelle Voters Rights Defense Fund v. City of New Rochelle* (Report and Testimony, 2003, Southern District of New York, cited in the opinion); *People v. Sweat* (Affidavits, 2003, Broome County, NY); *Montano v. Suffolk County Legislature* (Declaration and Testimony, 2003, Eastern District of New York, cited in opinion); *Rodriguez v. Pataki* (Declaration, Report, and Deposition and Trial Testimony, 2002-2003, Combined Second Circuit, Southern District of New York Panel, cited in the opinion); *Hines vs. Charleston Missouri Housing Authority* (Report and Testimony at Trial, 2002 to 2003, Eastern District of Missouri,

analysis cited in opinion); *Reese, et al. vs. Miami-Dade County, et al.* (Report and Testimony at Hearing, 2001 to 2002, Southern District of Florida). Virtually all cases and testimony are listed in my résumé attached as Exhibit A.

3) Lawyers who represent the plaintiffs in the case *Anderson, et al. v. Jackson, et al.* retained me to provide an analysis of the impact of Defendants' plans to demolish or redevelop public housing post-Hurricane Katrina upon low-income African-American residents of New Orleans.

4) I have been retained at the rate of \$125 per hour plus expenses.

5) I have received or have access to the following data and materials:

- a) Data from the 2000 Census for the seven parishes in New Orleans Metropolitan Area, and from various Census estimates, as well as estimates and reports from others, including Brown University, Rand Corporation and Brookings Institution.
- b) Information on the flooding that occurred in the New Orleans Metropolitan Area following Hurricane Katrina, including information on the impact of Katrina from FEMA via *The New York Times*, and more detailed and refined Flood Maps in computerized form from Louisiana State University and Brown University.
- c) *The Impact of Katrina: Race and Class in Storm-Damaged Neighborhoods*. John Logan, Brown University. Available on the WEB at <http://www.s4.brown.edu/katrina/report.pdf>
- d) Brown University's, Metropolitan Racial and Ethnic Change Census 2000 report, available on the WEB at <http://www.s4.brown.edu/cen2000/WholePop/WPsegdata.htm>
- e) A GIS system that allowed me to overlay the flooding data with Census data on population.

- f) The *Anderson v. Jackson* Complaint and the Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Injunction (Aug. 10, 2006).
- g) Court opinion in *Anderson v. Jackson* (Feb. 6, 2007), Document 175.
- h) The Housing Authority of New Orleans (HANO), PHA Plans, 5 Year Plan for Fiscal Years 2001 – 2005 and Annual Plan for Fiscal Year 2003.
- i) The Housing Authority of New Orleans (HANO), PHA Plans, 5 Year Plan for Fiscal Years 2006 – 2010 and Annual Plan for Fiscal Year 2007. 12/15/2006.
- j) Housing Authority of New Orleans, Request for Demolition/Disposition Approval Application for C.J. Peete (LA1-02), Lafitte (LA1-05), B.W. Cooper (LA1-07), St. Bernard (LA1-08), B.W. Cooper Extension (LA1-12) and St. Bernard Extension (LA1-13) Supplemental Information, March 9, 2007. (Document AND007-067)
- k) Housing Authority of New Orleans, Section 106 Documentation for B.W. Cooper, C.J. Peete, Lafitte, and St. Bernard. Four Documents Each Dated January, 2007.
- l) Housing Authority of New Orleans – Redevelopment Schedule, January 2007. (Document HANO 033566)
- m) REIS, Post-Katrina Real Estate Market Analysis. (Document AND012-000035)
- n) *Metropolitan New Orleans, Real Estate Market Report, Katrina Edition*. Ivan J. Miestochovich. University of New Orleans, Real Estate Market Data Center and Center for Economic Development. May 2006, Volume 38.

- o) Data from *CHAS (Comprehensive Housing Affordability Strategy) Data Base*. US Department of Housing and Urban Development, Office of Policy Development and Research. Available from [www.huduser.org](http://www.huduser.org).
- p) Data from the *Picture of Subsidized Households, 2000*. US Department of Housing and Urban Development, Office of Policy Development and Research. Available from [www.huduser.org](http://www.huduser.org).
- q) Consolidated Plan: 2006, Action Plan for the City Of New Orleans. City of New Orleans: 2006-2010. Available at this website <https://secure.cityofno.com/Resources/Portal49/Draft%202006-10%20Consolidated%20Plan%2010706.pdf>.
- r) Consolidated Plan: 2005, Action Plan 2005 for the City Of New Orleans. City of New Orleans: Available at this website <https://secure.cityofno.com/portal.aspx?portal=49&tabid=2&editor=false>
- s) Loren C. Scott's reports, *Advancing in the Aftermath: Tracking the Recovery from Hurricane Katrina and Rita I, II, III and IV*. Available here <http://www.lorenscottassociates.com/Reports/>.
- t) American Housing Survey for the New Orleans Metropolitan Area, 2004. US Department of Housing and Urban Development, Office of Policy Development and Research. Available from [www.huduser.org](http://www.huduser.org).
- u) Comprehensive Market Analysis Reports, New Orleans-Metairie-Kenner Louisiana Metropolitan Statistical Area: Economic and Housing Market Conditions Pre- and Post-Katrina and Rita: A Comprehensive Market Analysis Special Report, As of September 1, 2005 with Updates to February 1, 2006. US Department of Housing and Urban Development, Office of Policy Development and Research. Available from [www.huduser.org](http://www.huduser.org).

- v) Comprehensive Housing Market Analysis, New Orleans-Metairie-Kenner, Louisiana, US Department of Housing and Urban Development, Office of Policy Development and Research, As of September 1, 2006. Available from [www.huduser.org](http://www.huduser.org).
- w) Data on the evacuated Public Housing tenants provided by the Housing Authority of New Orleans. HANO Return Team Tenant Directory, 22Mar2007 (an Excel Workbook) and materials related to surveys of evacuated tenants, including the following Excel workbooks: "CLIENT SERVICES SURVEY FORM SPREADSHEET;" "Final Client Services Survey's;" "HANO-Resident-Survey-012607;" and eight more workbooks, each beginning with the phrase "SURVEY FORM SPREADSHEET" with the following set of dates: "JANUARY 23, 24 & 25TH 2006;" "JAN 31, FEB 1 AND 2ND 2006;" "FEB 3, 6 AND 7TH;" "FEB 8, 9 AND 10TH 2006;" "FEB 13, 14 AND 15TH 2006;" "APRIL 6, 7 AND 10TH 2006;" "APRIL 11, 25 AND 26TH 2006;" "APRIL 27, 28 MAY 1 2006;" list of EXCEL Spreadsheets.)
- x) *For Rent, Unless You're Black: An Audit Report and Study on Race Discrimination in the Greater New Orleans Metropolitan Rental Housing Market.* Greater New Orleans Fair Housing Action Center, 2007.

# **I. Prior to Katrina, Housing Opportunities for Low Income African American Residents Were Severely Limited.**

- 6) On the eve of Hurricane Katrina, there was a tight rental market in New Orleans and in the New Orleans Metro, and poor households—a large proportion of them non-Hispanic black—were spending very large fractions of their incomes for housing, due to the fact that many more were eligible for subsidized housing than were residing in

subsidized units. HANO had a huge waiting list of qualified tenants who could have been offered subsidized housing if it existed. Poor African American households lived disproportionately in the City of New Orleans. Many neighborhoods in New Orleans were highly concentrated<sup>1</sup> and even before Katrina unsubsidized residents lived in housing units that were not affordable given their household incomes and the high rent levels.

7) Furthermore, the majority of pre-Katrina recent housing loss was in the City of New Orleans, according to an analysis done by HUD: "During the decade [the 1990s], the rental market lost almost 18,000 units . . . more than 10,000 were located in Orleans (p.14)"<sup>2</sup>

8) According to the *Picture of Subsidized Households 2000* for New Orleans Metro, about 22,500 households were subsidized in 2000, 88 percent of them were non-Hispanic Black and their average income was \$8,500. They had waited an average of 30 months to gain access to their unit.

9) The pre-Katrina Public Housing Plans filed by the Housing Authority of New Orleans (Annual Plan for Fiscal Year 2003 and Consolidate Plan for Fiscal Years 2001-2005), indicate that the Public Housing waitlist was 8,250 households, roughly 90 percent with extremely low incomes, and over half with families with children. Over 98 percent of the waiting list was African American. In addition, the Section 8 waiting list included 16,102 families with very similar income, families with children and African-American composition. HANO also reported extreme housing need in New Orleans for those who are poor (about 52,000 families have incomes of 50 percent of the "adjusted

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<sup>1</sup> See Brown University's, Metropolitan Racial and Ethnic Change Census 2000 report, available on the WEB at <http://www.s4.brown.edu/cen2000/WholePop/WPsegdata.htm>.

median income" or less), and indicated that the affordability problems and supply for families with such incomes are having a "severe impact" (pp. 6-8.)

10) The metropolitan area that includes New Orleans encompasses the seven parishes as indicated in Exhibit B, which provides a map of the area. For purposes of this report, the New Orleans – Metairie – Kenner Metropolitan Area will be referred to as the "New Orleans Metropolitan Area," the "New Orleans Metro," or "the wider metro."

11) Exhibit C presents a map of the distribution of the African-American population in the area before Katrina. This map shows that the black population was largely in Orleans Parish, but some did live in other areas.

12) Exhibit D presents a map of those who lived below poverty and they were also more than proportionately in Orleans parish.

13) Exhibit E presents a series of tables that compares the City of New Orleans to the wider metropolitan area as of 2000. Information from that table shows the following:

- a. While the population of City of New Orleans was about 67 percent black, that of the broader metro was only 37 percent black. Indeed, almost three-quarters of all blacks in the area lived in City of New Orleans. At the same time, the New Orleans metro was 54.8 percent white, while the City of New Orleans was 26.6 percent white.
- b. Those households that lived in City of New Orleans generally had lower household and family incomes than those that lived in the wider

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<sup>2</sup> Comprehensive Market Analysis Reports, New Orleans-Metairie-Kenner Louisiana Metropolitan Statistical Area: Economic and Housing Market Conditions Pre- and Post-Katrina and Rita: A Comprehensive Market Analysis Special Report, As of September 1, 2005 with Updates to February 1, 2006. US Department of Housing and Urban Development, Office of Policy Development and Research. Available from [www.huduser.org](http://www.huduser.org).



metropolitan area. A much higher percentage—28 percent compared to 18 percent—lived below poverty.

- c. A much high proportion of households lived in rental housing in City of New Orleans than in the wider area.

14) The Department of Housing and Urban Development ordered a set of tables from the Census Bureau based on the 2000 Census. These so-called *CHAS* (*Comprehensive Housing Affordability Strategy*) tables help determine the extent to which various residents of various areas (and with various incomes, family types and racial and Hispanic origins) live in units with “housing problems” or where the households spend a very large proportion of their income for housing.

15) Generally, when low-income households spend more than 30 percent of their income on housing, such housing is considered not to be “affordable” to the household.

16) Exhibit F-1 uses data from the CHAS tables to report which groups of all households and which groups of tenants would have fallen into the categories of very low income in the City of New Orleans prior to Katrina. As that table makes plain, while 59.0 percent of all Non-Hispanic Black renters had a very low income, only 31.1 percent of such Non-Hispanic White households had a very low income.

17) Indeed, for every category of income and every classification of housing the Non-Hispanic Black households had a much higher proportion in the low-income categories.

18) Exhibit F-2 presents the same information for 2000 for the New Orleans Metro before Katrina, where 56.5 percent of all Non-Hispanic Blacks were very low income, compared to 30.9 percent for Non-Hispanic Whites. It should be noted that

roughly the same proportions of African-Americans and Non-Hispanic Whites both in the city and in the wider area had low incomes according to the 2000 Census.

19) Exhibit G gives information for the metropolitan area regarding the number and proportion of households who had very low levels of income, and the proportion of households who spent at least 30% of their income for housing before Katrina. While 46.5 percent of all households had incomes less than \$20,000 per year in 1999, some 58.7 percent of all household with a non-Hispanic Black householder had income less than \$20,000, while for households with non-Hispanic white householders the figure is 34.7 percent. Plainly, the Non-Hispanic black households were much more deprived before Katrina than were Non-Hispanic white households.

20) The second panel of Exhibit G indicates that over 80 percent of households with incomes less than \$20,000 from all groups spent more than 30 percent of their income for housing. However, since a much larger proportion of households with Non-Hispanic Black householders had incomes below \$20,000, it affected such households to a much larger degree.

21) In sum, before Katrina there was a massive housing need for low-income African Americans in New Orleans and in the wider metro that was not being met.

## **II. Katrina Damaged and Destroyed Housing Disproportionately Occupied by Low Income and African-American Households in New Orleans and the Wider Metropolitan Area.**

22) Katrina damaged and destroyed housing for many in New Orleans and the wider metropolitan area, most especially for low-income African-American residents, including those in subsidized housing, whether Section 8 or Public Housing. Such residents now face a housing crisis in New Orleans brought on by Katrina and its aftermath.

23) The areas flooded in the wake of Katrina disproportionately included low-income areas inhabited by African Americans. Exhibits H and I show this graphically.

24) A study by John Logan of Brown University, *The Impact of Katrina: Race and Class in Storm-Damaged Neighborhoods* documents the impact of Katrina, especially in New Orleans. According to this report, while the residents in the damaged areas were 75.0 percent black and 29.2 percent poor, in the undamaged areas they were 46.2 percent black and 24.7 percent poor based upon 2000 Census data. (See Table 2, p. 7).

25) These figures demonstrate that not only did Katrina disproportionately affect low-income and African-American households, but these residents suffered greater damage and hardship from the storm than did other residents of New Orleans and the wider metropolitan area.

26) The main effect of Katrina, of course, was the following: "Damage from wind and flood waters affected a remarkable 434,216 homes in this MSA, over 207,000 were so badly damaged that they were rendered uninhabitable," according to Loren C. Scott's report. *Advancing in the Aftermath: Tracking the Recovery from Hurricane Katrina and Rita I*. (February 2006, p.2)

27) One effect of this housing loss, even with the large number of evacuees leaving the area, is that the rental-housing market is particularly tight.

- a. According to the report "New Orleans-Metairie-Kenner, Louisiana Metropolitan Statistical Area: Economic and Housing Market Conditions Pre- and Post-Katrina and Rita: A Comprehensive Market Analysis Special Report of the as of September 1, 2005, With Updates to February 1, 2006," some 18,000 apartments were seriously damaged by the storm and 30,000 were still habitable. Those apartments were 100 percent occupied.

- b. The Comprehensive Housing and Market Analysis for September 1, 2006, stated: "The rental market is extremely tight, and a considerable unmet need for rental housing persists in the MSA. Strong absorption of available rental units in all housing markets has occurred, along with a significant increase in market rate rents." (p.1)
- c. The *Metropolitan New Orleans Real Estate Market Analysis: Katrina Edition* reports massive rent increases (p.58) and virtually no vacancies (p.54).
- d. A report by the Greater New Orleans Fair Housing Action Center<sup>3</sup> indicates that there is significant racial discrimination in the New Orleans Metropolitan Housing market; post Katrina, with regard to African Americans: "In 6 out of every 10 transactions, GNOFAC's African American testers encountered less favorable treatment based upon race." (Executive Summary).

28) Together these real estate factors mean that barriers to housing in New Orleans Metro for tenants requiring federal or other subsidies are nearly insurmountable, even for those with subsidies, due to the tight housing market and the evidence of discrimination. Units have been demolished, vacancies barely exist, rents have soared, and discrimination is rampant.

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<sup>3</sup> *For Rent, Unless You're Black: An Audit Report and Study on Race Discrimination in the Greater New Orleans Metropolitan Rental Housing Market.* Greater New Orleans Fair Housing Action Center, 2007.

**III. The Closing and Planned Demolition of 4,529 Public Housing Units Deprives Poor and Minority Individuals of Housing Opportunities In the New Orleans Metropolitan Area and Exacerbates the Housing Crisis They Already Face.**

29) Even before Katrina, there was a massive shortage of affordable subsidized housing for low-income tenants, a very high proportion of whom are low-income African Americans. The devastation of Katrina made this worse. HANO's removal of much public housing from the housing stock simply exacerbates the shortage of low-income subsidized housing.

30) Furthermore, in its "Request for Demolition/Disposition Approval . . . Supplemental Information, March 9, 2007," Section 7, HANO indicates that all the tenants in the affected projects were "relocated" in August 2005. In August 2005, all tenants evacuated all public housing projects in New Orleans because of Hurricane Katrina. This, of course, was the date of the evacuation before Hurricane Katrina. However after the flood, no plans beyond some sort of disaster voucher and the reopening of some public housing for a few exist for permanent relocation to decent comparable housing.

31) Defendants' policies of closing and demolishing the public housing in New Orleans, with no full replacement, deprive low-income and minority tenants of housing opportunities in New Orleans and the New Orleans Metro.

32) At this writing, 4,529 units are scheduled to be demolished, to be replaced by a mixture of market rate, affordable (without a direct tenant subsidy), and low-income public housing. The six projects affected include C.J. Peete, Lafitte, B.W. Cooper, Saint Bernard, B.W. Cooper Extension, and Saint Bernard Extension. Current plans indicate that 1,333 public and low-income subsidized units will be eventually created; thus the reduction from the stock before Katrina will be substantial.

33) Data from the *Picture of Subsidized Households, 2000* is shown in Exhibit J for each of the six projects. Plainly, the residents were, and continue to be, in dire need of subsidized housing. Virtually all had incomes below \$20,000, and the averages were even less, ranging from \$6,900 to \$8,500. All inhabitants were black.

34) According to the Housing Plans filed Post-Katrina ("The Housing Authority of New Orleans (HANO), PHA Plans, 5 Year Plan for Fiscal Years 2006 – 2010 and Annual Plan for Fiscal Year 2007." 12/15/06, pp. 7-8) the waiting lists for Public Housing and for Section 8 housing were still very large with 6,572 families still waiting for Public Housing and 10,873 waiting for Section 8 certificates. All but 63 of these families had less than half of the adjusted median income, and over 98 percent of them were African American.

35) HANO performed a survey of the former tenants during the fall of 2005 and the spring of 2006. The respondents to this survey included residents of public housing projects that are not scheduled for demolition (and some who had lived in projects that are scheduled for demolition), as well as Section 8 tenants and some others. This is a reasonable group from which to assess the intention and interest in returning to New Orleans among those who lived in subsidized housing. Such residents, as we have seen, are overwhelmingly low-income African Americans.

36) HANO provided these data to plaintiffs, and I analyzed these data. (See Exhibit K.) According to this survey, which did not reach all residents, 78.8 percent of public housing tenants want to return to New Orleans, and 17.6 percent more would return if housing were available: a total of over 96 percent. Similar percentages of Section 8 and other tenants indicate that they would like to return.

37) In short, the closing and planned demolition of 4,529 units of public housing with only a partial replacement will deleteriously affect the low-income and minority public housing tenants.

38) Vouchers, whether disaster vouchers or other vouchers, cannot secure housing where there is a serious shortage, such as areas where housing has been destroyed by a hurricane. One cannot expect the market to replace housing quickly, a necessary condition for vouchers to work. Indeed, HANO has agreed to pay up to 35 percent above the New Orleans "Fair Market Rent," since the current vouchers do not often lead to housing opportunities.

39) Such a policy, of course, will simply make housing even scarcer for other low-income or subsidized tenants in need of housing in the New Orleans area, and who do not have vouchers. When vouchers are used to accommodate displaced public housing tenants, and there is a shortage of housing, those holding vouchers will simply displace those who do not, such as those on the Public Housing or Section 8 waiting lists. Reopening public housing would lead to more housing opportunities for low-income residents, while keeping public housing closed reduces those opportunities.

40) To assess the long-term impact on the low-income African American community in New Orleans and the wider metropolitan area, I assessed the "HANO Redevelopment Schedule, January 2007." Given the current housing crisis for subsidized tenants in New Orleans and the almost complete lack of housing for them at present, even with vouchers paying up to 35 percent over the normal standards, the following conclusions are incontrovertible:

- a. The demolition of the six housing projects and the building of replacements will result in housing deprivation by the residents for the period from their

relocation in August 2005 until they move into replacement housing. By using vouchers, they may displace other low-income tenants.

- b. According to current proposals (Housing Authority of New Orleans -- Redevelopment Schedule, January 2007) the 4,529 units, which are fully subsidized units, will be replaced by 1089 units in four sites, plus another 244 units designated for home-ownership for subsidized low-income households. This means that there will be a total of 1,333 units that can be occupied by subsidized tenants, which implies a projected loss of fully subsidized units of 3,196, or over 70 percent of current number.
- c. To fully replace the units currently scheduled to be demolished the following actions must be taken:
  - i. The 3,196 units must be replaced by actual units or by permanent vouchers that are fully subsidized, which are in addition to the vouchers now available, and they must be at the level and have the flexibility of Section 8 vouchers;
  - ii. If the latter strategy (additional vouchers with the flexibility of Section 8 vouchers) is followed, the rental market must make it possible for those with such vouchers to find housing. The latter is an unlikely possibility given the current housing shortage in New Orleans.
  - iii. If such full replacement is not done, then the current plan will lead to the permanent destruction of housing opportunities for low-income tenants, the vast proportion of whom are African Americans.

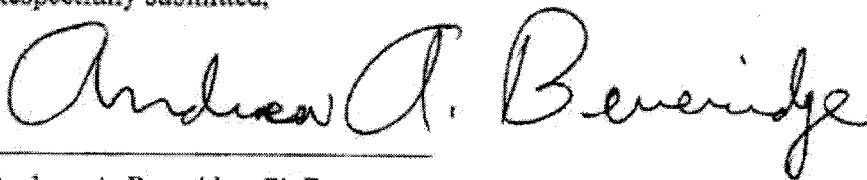


41) One should bear in mind that public housing tenants chose public housing, if it is available, because they cannot afford other sorts of housing, e.g. market based rentals; middle-class affordable; conventional owner-occupied. As with Section 8 tenants, public housing tenants rely upon that subsidy to make it possible for them to reside in affordable housing. Both the Public Housing and Section 8 waiting lists have thousands of families waiting for housing.

42) The current plan calls for the demolition of 4,529 public housing units in New Orleans, and its long-term replacement of only about 30 percent of the subsidized units. This means that housing opportunities for low-income African Americans, a group with large unmet needs, are being systematically deprived of the housing they require both in the short-term and in the long-term.

43) The foregoing statistical reporting is based upon my experience and qualifications as a social science and statistical data analyst utilizing data from the sources indicated.

Respectfully submitted,

A handwritten signature in black ink, reading "Andrew A. Beveridge". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Andrew A. Beveridge, Ph.D.  
June 12, 2007