

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

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BEATRICE B. McWATERS; FLORENCE :
JACKSON; CALVIN DAVIS; REGINALD :
JONES; VAN PATIN; JOHN HUBBARD; :
BILLY SMITH; THURMOND PRICE; KEIVA :
MELISSA COLOMB; RUSSELL HAYWARD; :
MARY PAT VAN TINO; PAMELA JACKSON; :
WILLIAM DAVIS; ELIZABETH SIMPSON; :
CHRIS DAVIS; LYMAN SCOTT; MICHELLE :
DAVIS; JENNIFER SAMPEY; DAVID MAGEE; :
and KEISHAN GOODMAN; On Behalf Of :
Themselves And All Those Similarly Situated, :

Civ. No.: 05 - 5488 (PHB)

Plaintiffs, :

- against - :

FEDERAL EMERGENCY MANAGEMENT :
AGENCY; DEPARTMENT OF HOMELAND :
SECURITY; MICHAEL CHERTOFF, Secretary :
of Department of Homeland Security; DAVID :
PAULISON, Interim Director, Federal :
Emergency Management Agency; THAD W. :
ALLEN, Principal Federal Official, Federal :
Emergency Management Agency; KENNETH O. :
BURRIS, JR., Regional Director, Federal :
Emergency Management Agency; RON :
CASTLEMAN, Regional Director, Federal :
Emergency Management Agency; RON :
SHERMAN, Federal Coordinating Officer, :
Federal Emergency Management Agency; :
WILLIAM CARWILE, Federal Coordinating :
Officer, Federal Emergency Management :
Agency; BILL LOCKEY, Federal Coordinating :
Officer, Federal Emergency Management :
Agency; and their successors in office, :

Defendants. :

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I. INTRODUCTION

Plaintiffs respectfully submit this memorandum in support of their motion for a temporary restraining order (“TRO”) and preliminary injunction pursuant to Rules 65(a) and (b) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”).

Plaintiffs commenced this putative class action on November 10, by filing a Class Action Complaint, which was amended on November 18 (the “Complaint”). The twenty named plaintiffs are unrelated victims of Hurricane Katrina, whose homes were destroyed. Each applied at least 8 weeks ago, some more than 11 weeks ago, for disaster assistance from the Federal Emergency Management Agency (“FEMA”). Pursuant to the Disaster Relief and Emergency Assistance Act 42 U.S.C. § 5121 *et seq.* and the regulations promulgated thereunder (the “Stafford Act”), FEMA is the federal agency responsible for providing disaster victims with financial assistance to pay for rental housing, or with a trailer or mobile home (hereinafter referred to as “Assistance”). The Complaint does not seek monetary damages. Rather, it seeks only declaratory and injunctive relief, mandating that defendants abide by the requirements of the Stafford Act and provide Assistance to eligible applicants.¹

The devastation wreaked by Hurricane Katrina has been exacerbated by the continuing failures of defendants to provide adequate and timely relief to plaintiffs. Immediate action is required, because each additional day the named plaintiffs and the similarly situated class members are denied Assistance, they continue to suffer in myriad ways, as they have since August 29. Many victims are forced to live in unsafe and unsanitary conditions, and families separated as a result of the disaster have no means to reunite. Defendants’ failure and refusal to

¹ Also named as defendants are the Department of Homeland Security (“DHS”) which controls FEMA, and officials of FEMA and DHS who are responsible for setting and/or implementing the policies and procedures challenged in the Complaint, each of whom is sued only in their official capacity.

provide housing assistance to thousands of victims has, and will continue to cause further homelessness, hunger and stress, and, as a consequence, increase the risk of illness and danger in their lives.

The twenty named plaintiffs are eligible for Assistance under the Stafford Act, because they are individuals “displaced from their predisaster primary residences or whose predisaster primary residences are rendered uninhabitable as a result of damage caused by a major disaster.” 42 U.S.C. § 5174(b). Sixteen of the named plaintiffs either have been denied Assistance or have applications that are still “pending.” The remaining plaintiffs received \$2,358 from FEMA without notice that it was to be used only for rent and, thus, used some to purchase necessities of life. Those plaintiffs now find themselves indebted to their Government, accused of misusing the grant and being deemed therefore ineligible for continued rental assistance.

The Complaint consists of fifteen causes of action, challenging illegal policies and procedures FEMA has employed in processing applications and distributing Assistance. For example, many disaster victims have been denied Assistance because they lived at the same address as another applicant, such as in a rooming house, because of a mechanistic presumption of fraud used by FEMA. Others have been forced to jump over an additional hurdle by applying for a Small Business Administration (“SBA”) loan as a condition to applying for Assistance. Some plaintiffs were denied crucial notice regarding the scope and conditions of Assistance. Still others wait for Assistance more than two months after applying, an effective denial given that either way the applicant has no money for housing. These acts and omissions violate the Stafford Act and the Due Process Clause of the Fifth Amendment to the United States Constitution (the “Duc Process Clause”).

Plaintiffs – like many of the several hundred thousand victims of Hurricane Katrina from Louisiana, Mississippi and Alabama who lost their homes in the disaster – desperately need the Assistance for which they are eligible under the Stafford Act. Plaintiffs Calvin Davis, Jr., Reginald Jones and Billy Smith, among others, already have spent weeks in shelters while attempting to obtain that assistance. (Compl. ¶¶ 29, 30, 31, 32, 33 and 45.) Others, such as plaintiffs Chris Davis, Lyman Scott and Michelle Davis are living day-to-day in hotels or other accommodations provided by others, unsure of when they will be forced out, all the while waiting for their Assistance. (Compl. ¶¶ 41, 42, and 44.) Accordingly, the plaintiffs seek a narrowly tailored emergency TRO and preliminary injunction, absent which they will continue to suffer indefinitely.

Plaintiffs seek to represent a class consisting of all persons who (a) on August 29, 2005, resided in Louisiana, Mississippi, or Alabama, in areas declared to be Federal Disaster Areas; (b) were displaced from their pre-disaster primary residences or whose pre-disaster primary residences have been rendered uninhabitable as a result of Hurricane Katrina; and (c) have applied for or will apply for Assistance under the Stafford Act, and (i) have not yet received Assistance, (ii) have unlawfully been denied Assistance, (iii) have not been adequately informed about the scope and conditions of the available Assistance, and/or (iv) have been unable to apply for Assistance due to a lack of information or accessibility to FEMA. The class does not include persons who have committed fraud in applying for Assistance.

Plaintiffs seek a TRO and preliminary injunction to (i) restrain the defendants from denying Assistance to applicants based upon the wrongful application of the “Shared Household Rule” and SBA loan requirement; (ii) mandate that eligible applicants immediately receive their Assistance; (iii) mandate that applicants denied Assistance are provided written notice of the

reason for such denial; (iv) mandate that applicants for Assistance are given meaningful notice about the scope and conditions of available Assistance; (v) restrain defendants from denying continued rental assistance or seeking to recoup assistance on the grounds that it was “misapplied;” and (vi) restrain the closure of shelters housing victims who have applied and are still waiting for their Assistance, unless substitute housing is offered.

Each of the requirements for preliminary injunctive relief is satisfied. Irreparable harm to plaintiffs absent preliminary injunctive relief is undeniable. One cannot quantify or compensate for the stress, fear and danger each of the plaintiffs and their families face every day they are wrongfully denied Assistance. Moreover, the requested relief does not require defendants to grant Assistance to anyone not entitled to such benefits. Plaintiffs ask only that the defendants cease denying assistance based on policies and procedures that are in contravention of the Stafford Act and the Due Process Clause. Because of the immediacy of the irreparable harm, plaintiffs also seek a TRO pending a hearing on its motion for a preliminary injunction.

II. BACKGROUND

A. The Statutory Scheme

The Stafford Act defines the type and scope of federal assistance available in the event of a declared disaster. One type of aid authorized by the Stafford Act is temporary housing assistance, which consists of (i) “financial assistance” and (ii) “direct assistance.” 42 U.S.C. § 5174(c).

“Financial assistance,” sometimes known as “rental assistance,” is intended to enable “individuals or households to rent alternate housing accommodations, existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings.” 42 U.S.C. § 5174(c)(1)(A)(i). In the immediate aftermath of Hurricane Katrina, FEMA affirmatively

undertook to provide victims of Hurricane Katrina with an expedited payment in the amount of \$2,358, intended to cover their rent for three months.

The “direct assistance,” also known as “trailer assistance,” enables disaster victims to receive a trailer or mobile home. Trailer assistance is available to victims who cannot use rental assistance because of, among other things, a lack of rental housing. 42 U.S.C.

§ 5174(c)(1)(B)(i). Assistance, both rental and trailer, is available for 18 months from when the President declares a disaster, but may be extended beyond that time. 44 C.F.R. § 206.110(e).

The Stafford Act affords benefits to individuals or households which have been “displaced from their pre-disaster primary residences,” or whose pre-disaster primary residences have been “rendered uninhabitable as a result of damage caused by a major disaster.” 42 U.S.C. § 5174(b)(1). It contains no other eligibility requirements for Assistance. The Stafford Act also mandates that the distribution of federal benefits be done in “an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.” 42 U.S.C. § 5151(a).²

On August 27 and 28, 2005, President Bush declared states of Emergency in Louisiana, Mississippi and Alabama. Those declarations mandated FEMA to provide Assistance to the named plaintiffs and other victims of Hurricane Katrina. FEMA’s duty to provide such Assistance was mandatory, and not discretionary.

B. FEMA’s Wrongful Policies And Procedures

As a result of Hurricane Katrina, the named plaintiffs and hundreds of thousands of other people – many of them poor and illiterate – were forced to leave their homes in Louisiana, Mississippi, and Alabama, and were in need of and eligible for Assistance. Shortly after the

² The federal regulations have an identical requirement in 44 C.F.R. § 206.11(b).

hurricane struck, Congress allocated \$62 billion to be administered primarily by FEMA, much of it earmarked for the temporary housing needs of disaster victims. Yet, FEMA has failed to abide by its mandate. As set forth below, it has utilized policies and procedures in processing applications for Assistance that violate the clear mandates of the Stafford Act and the Due Process Clause, and which now should be enjoined.

1. Misapplication of the “Shared Household Rule”

One of the illegal policies challenged by plaintiffs is FEMA’s refusal to provide Assistance to an individual who lived at the same address as another applicant.

Under FEMA’s so-called “Shared Household Rule,” FEMA typically will provide benefits to a pre-disaster household as a unit, and not provide more than one set of benefits to individuals believed to be part of a single pre-disaster household. But where the disaster disintegrates a family, such that they are no longer able to share a single household, FEMA is authorized to “provide assistance for more than one residence.” 44 C.F.R. § 206.117. This is often necessary where, as here, FEMA evacuated members of a household to different places. Nonetheless, FEMA consistently refuses to apply the less restrictive rule.

Moreover, in many of the poorer sections of the Gulf Coast Region, multiple, unrelated individuals and families lived at the same address, in a rooming house, single residence occupancy or other common facility. On this fact alone, however, FEMA has denied Assistance to plaintiffs who shared an address with another applicant, presumably on the theory that everyone at a shared address is part of a “shared household,” even though they lived separately and paid their own rent.

Such is the case of plaintiff Thurmond Price, who suffers from diabetes and a heart condition. Mr. Price was living by himself in a house in New Orleans when Hurricane Katrina struck. Several other people with whom Mr. Price had no relation also lived in the house, and as

a result he was denied Assistance by FEMA based upon the Shared Household Rule. (Compl. ¶ 34.) Plaintiff Billy Smith was considered by FEMA to have shared a pre-disaster household with five other men based solely on the fact that they lived in the same facility and shared a phone number, forcing him to remain in a shelter. (Compl. ¶ 34.) Likewise, FEMA has refused Assistance to plaintiff Elizabeth Simpson, simply because one of her roommates who evacuated to a different region apparently used the same phone number when registering for Assistance. (Compl. ¶ 40.) Plaintiff Beatrice McWaters was denied Assistance because she lived in the same home as her mother, notwithstanding the fact that she paid her mother rent. (Compl. ¶ 27.) Apparently, FEMA concluded that Ms. McWaters, who was a teacher for 15 years becoming an assistant principal and then principal for 24 years, and her 93 year-old mother and disabled brother, were attempting to commit a fraud.

For some pre-disaster households that were disintegrated by the hurricane, FEMA denied benefits to a second member of a pre-disaster household that applied for Assistance. For example, plaintiff Michelle Davis was living with her six-year old daughter and mother before the hurricane. (Compl. ¶ 43.) When they evacuated from New Orleans, Ms. Davis and her mother were separated, but FEMA refused Assistance to Ms. Davis because her mother also registered for benefits. (*Id.*)

FEMA's application of the Shared Household Rule in each of these circumstances is unlawful and inconsistent with the Stafford Act and the Due Process Clause.

2. Illegal Linkage Between SBA Loans And FEMA Housing Assistance

The Stafford Act mandates that eligibility and receipt of Assistance shall not be dependent upon whether the applicant has applied for or received an SBA loan. Thus, section 5174(a)(2) provides that "an individual or household shall not be denied [A]ssistance ... solely on the basis that the individual or household has not applied for or received any loan or other

financial assistance from the Small Business Administration or any other Federal agency.”

FEMA has violated this mandate by requiring the named plaintiffs and other victims of Hurricane Katrina to complete an SBA loan application in order to qualify for Assistance.

For example, plaintiff Reginald Jones was told by FEMA in mid-October that to receive benefits he would have to complete an SBA loan application. (Compl. ¶ 30.) Mr. Jones completed the SBA loan application approximately 1 month ago, and still has yet to receive any Assistance. (*Id.*) Other plaintiffs have also been required to fill out an SBA loan application and have been denied Assistance. (*See* Compl. ¶¶ 33, 45.) Requiring an otherwise eligible victim to complete an SBA loan application in order to be considered for Assistance is a violation of the Stafford Act and the Due Process Clause.

3. Delays Of Assistance That Amount To Denials

Many applicants for Assistance, including several named plaintiffs, have neither received benefits nor a denial from FEMA; instead, for weeks and months they have existed in a black-hole denominated as “pending.” This indeterminate status has the practical effect of a denial for the eligible applicant who is still left without housing. FEMA fails to meet its obligations under the Stafford Act or the Due Process Clause by putting applicants on “hold” indefinitely.

For example, plaintiff Lyman Scott, a stroke victim who suffers from liver disease, applied in early September, but has been repeatedly told that his application is still “pending” and has received no Assistance. (Compl. ¶ 42.) Plaintiff Florence Jackson, who was a resident of Orleans Parish, Louisiana when Hurricane Katrina struck and rendered her apartment uninhabitable, applied for Assistance on September 5, 2005, and is still “pending.” (Compl. ¶ 28.) Plaintiff Calvin Davis, Jr. has not received any Assistance from FEMA even though he applied the first week of September. He, too, has been told his application is “pending,” leaving

him in a shelter. (Compl. ¶ 29.) Similarly, plaintiff Chris Davis applied for benefits on September 3, 2005, and has been repeatedly told by FEMA to wait another week. (Compl. ¶ 41.)

4. FEMA Failed To Provide Plaintiffs With Crucial Information

FEMA has failed in several significant respects to provide named plaintiffs, and countless other members of the class, with timely and necessary information regarding the scope and conditions of Assistance and, as a result, has deprived them of the ability to claim their benefits.

For example, while the “expedited” \$2,358 payment is only intended to cover three months of rental payments, several named plaintiffs have not been told by FEMA what they must do to extend the rental assistance which, for some, will expire in early December. Plaintiffs and other eligible disaster victims are entitled under the Stafford Act to 18 months of assistance, but are rarely told it can be extended for that period of time. Indeed, some have been told by FEMA, incorrectly, that rental assistance is not available beyond the initial three-month period.

Some plaintiffs who received the \$2,358 in rental assistance were not told what they could spend it on and, in particular, the extent to which they could use it for essentials like food and clothing, security deposits and utility costs. They are victims of the so-called “gap” period – receiving \$2,358, and then weeks later receiving a notice from FEMA advising them that the money was to be used only for rental assistance.³ FEMA is now penalizing these victims by insisting that they pay back the money spent on basic living expenses other than rent or be deemed ineligible for continued rental assistance.

For example, plaintiff Russell Hayward lived with his wife in Long Beach, Mississippi when Hurricane Katrina struck and destroyed their trailer. (Compl. ¶ 36.) On October 6, 2005, Mr. Hayward received \$2,358 from FEMA, with no explanation or information as to how it

³ The “gap” period presumably results from the fact that the \$2,358 checks (or direct deposits) came from the Department of Treasury, but the informational notices were sent out by FEMA.

could be spent. Not knowing that this money was for rental assistance, Mr. Hayward spent it on food, clothing and emergency dental work. (*Id.*) FEMA has since informed him that he is ineligible for continued Assistance unless he can prove the \$2,358 was spent on rent. (*Id.*)

Likewise, plaintiff Keiva Melissa Colomb applied for FEMA aid on August 31, 2005. (Compl. ¶ 35.) Three weeks later, she received \$2,358 with no information regarding its purpose, how it could be used, or how long it was intended to last. (*Id.*) She used some of the money to buy the bare necessities, and has been told that she cannot receive any further Assistance because she did not use the money in its intended manner. (*Id.*)

In addition, FEMA's approach to notifying applicants about the scope of trailer assistance that is available under the Stafford Act is anything but transparent. More than two months after the hurricane struck, FEMA still has not provided many victims information regarding the availability of trailers, or how the trailer application process works. The availability of trailers to victims of Hurricane Katrina is of vital importance given that the hurricane destroyed entire towns and communities, leaving no rental housing standing in some places. For such victims, and for people who want to be close to their homes while they rebuild, a trailer is the only option. But because they were not notified of the availability of trailer assistance when they applied for Assistance weeks and months ago, many disaster victims remain in shelters, or worse, unable even to use the rental assistance they might have received because there is no available rental housing.

Because the process of obtaining trailer assistance has been arbitrary and fraught with red tape and other bureaucratic impediments, others who have been notified and identified as qualifying for a trailer still have not received one and have no idea when or if they ever will. For example, in early September plaintiff Van Patin, who had a leg amputated and is wheelchair

bound, applied for FEMA housing assistance. (Compl. ¶ 31.) He was told by FEMA that he would receive a handicap-accessible trailer, that the trailers were on-site and that they were in the process of installing ramps for the trailers. (*Id.*) To date, he has not received a trailer, or any Assistance or information from FEMA. (*Id.*)

The Stafford Act recognizes that not every household is the same, and that treating them so creates inequities. Therefore, 44 C.F.R. §§ 206.117(b)(1)(A) and (B) provide a mechanism for larger households, and households situated in locales where the cost of living is greater, to obtain more than \$786 in monthly rental assistance per household (which is based on the national average fair market rental rate for a two-bedroom unit), and more than a single standard-sized trailer. Many victims of Hurricane Katrina, particularly low-income victims, are part of very large and extended families that share a single home, and they merit such additional Assistance. Yet, FEMA has failed to notify many victims of their right to seek additional rental and trailer assistance based on family size, the locale in which they are renting, or other circumstances.

Plaintiffs seek to enjoin each of these violations.

C. Preliminary Relief Sought

The named plaintiffs seek a preliminary injunction providing the relief enumerated in the accompanying Proposed Order. Each of the requirements for preliminary injunctive relief is satisfied. A TRO is necessary due to the immediacy and scope of the harm that has been and will continue to be suffered by plaintiffs absent this relief.

III. ARGUMENT

PLAINTIFFS MEET THE STANDARDS FOR OBTAINING A PRELIMINARY INJUNCTION AND TRO

To obtain a preliminary injunction, the moving party must satisfy the following four factors: (1) a substantial likelihood that it will prevail on the merits; (2) that it will suffer

irreparable injury if the injunction is not granted; (3) that the threatened harm to the moving party outweighs the threatened harm the injunction may do to the non-moving party; and (4) that granting the preliminary injunction will not disserve the public interest. *Garcia v. United States*, 680 F.2d 29, 31 (5th Cir. 1982); *Canal Auth. of Florida v. Callaway*, 489 F.2d 567, 572-73 (5th Cir. 1974). This remedy is justified where necessary to “preserve the court’s ability to render a meaningful decision on the merits” at a later time. *See Canal Auth.*, 489 F.2d at 576.

It is not necessary that the moving party satisfy each of these factors to the same degree; rather, the district court must use a “balancing-type approach in reviewing a preliminary injunction or temporary restraining order application.” *Dai v. Caplinger*, Civ. No. 94-2190, 1995 WL 241861, at *2 (E.D. La. Apr. 25, 1995). For example, “[i]f a plaintiff makes a strong showing as to the other factors, ‘some likelihood’ of success may be all that is necessary to satisfy the first element. . . .” *Torries v. Hebert*, 111 F. Supp. 2d 806, 813 (W.D. La. 2000) (citing *Productos Carnic, S.A. v. Cent. Am. Beef & Seafood Trading Co.*, 621 F.2d 683, 686 (5th Cir. 1980)). To obtain a TRO pending a hearing on the preliminary injunction, the moving party must also show “that immediate and irreparable injury, loss, or damage will result to the applicant” before opposition can be heard and a hearing held. Fed. R. Civ. P. 65(b).

For the reasons stated below, all of the factors are met here for the issuance of a preliminary injunction and a TRO. Unless emergency relief is granted now, before a hearing can be held on the preliminary injunction or on the merits of plaintiffs’ claims, the lives of plaintiffs and other disaster victims will be harmed in irremediable ways, such that this Court will not at a later date, weeks and months in the future, be able to provide them with meaningful relief.

A. **Plaintiffs Have Already Suffered, And Will Continue To Suffer Immediate Irreparable Injury Absent Issuance Of A Preliminary Injunction And TRO**

In the traditional four-prong analysis for a preliminary injunction and TRO, one often begins with the “likelihood of success on the merits” before moving to “irreparable harm” and the other factors. Here, we first address the irreparable harm the plaintiffs will suffer absent judicial intervention because of the magnitude of the harm already being borne by the plaintiffs. Plaintiffs’ claims arise because FEMA is required to act in emergency conditions; only by understanding the magnitude of the need, can the enormity of the failures be assessed.

“An irreparable injury is an injury which cannot be redressed by a legal or equitable remedy following trial.” *Torries*, 111 F. Supp. 2d at 813. To satisfy the likelihood of irreparable injury prong, a plaintiff need only “establish that at the time of the injunction it was under a substantial . . . ‘threat of harm which cannot be undone’ . . . through monetary remedies.” *Spiegel v. City of Houston*, 636 F.2d 997, 1001 (5th Cir. 1981) (citing *Parks v. Dunlop*, 517 F.2d 785, 787 (5th Cir. 1975)). Here, the named plaintiffs are not merely under a *threat* of irreparable harm as a result of defendants’ wrongful conduct; *harm has already begun* and will continue unless the Court immediately grants the requested relief.

At issue in this case is one of the most fundamental concerns for any human being – whether they and their families will have a roof over their heads. By illegally denying Assistance to the named plaintiffs and similarly situated class members, defendants have forced them into a nomadic existence, moving from shelter to shelter or worse, left to manage for themselves on the streets, in cars, tents or abandoned buildings. Every day without safe and secure housing the harm continues. The danger to the health, safety and well-being for these plaintiffs, and the threat of homelessness, is constant.

For example, plaintiff Calvin Davis was evacuated right after the hurricane struck and was taken to a shelter in Baton Rouge, Louisiana. (Compl. ¶ 29.) When that shelter closed, he

was forced to move to another shelter in Baker, Louisiana, where he is believed to be currently staying. (*Id.*) The story is similar for plaintiff Billy Smith who also is believed to be staying in the same shelter. (Compl. ¶ 33; Smith Decl. ¶ 13.⁴) Likewise, plaintiff Jennifer Sampey and her husband were moved from shelter to shelter, while FEMA gave her the run-around. (Compl. ¶ 44.) She and her husband have now run out of money and have nowhere to go. (*Id.*; Sampey Decl. ¶ 11.) Similarly, plaintiff Michelle Davis and her six-year old daughter also were forced to live out of their vehicle for several days before finding a motel in which they could stay. (Compl. ¶ 43.) Ms. Davis was told she and her daughter had to leave the motel by Dec. 1, 2005, and they will have nowhere to live and no money to rent an apartment unless she receives Assistance. (*Id.*; M. Davis Decl. ¶ 15.)

Even for those named plaintiffs, like Elizabeth Simpson, and other evacuees fortunate enough to be sheltered temporarily by friends, they, too are living day-to-day under constant stress, anxiety and insecurity. (Compl. ¶ 40.) Ms. Simpson moves nearly every day to whoever will house her for the night. (*Id.*; Simpson Decl. ¶¶ 7, 26.) Those plaintiffs who received rental assistance without adequate notice as to how to continue that rental assistance beyond the initial three month period also are subjected to a threat of homelessness once the initial assistance is depleted in the coming weeks.

Courts have recognized that the threat of losing housing or being homeless constitutes a irreparable harm. For example, in *McNeil v. New York City Housing Auth.*, 719 F. Supp. 233, 254 (S.D.N.Y. 1989), the court held that “[t]he threat of eviction and the realistic prospect of homelessness constitute a threat of irreparable injury, and satisfies the first prong of the test for

⁴ All of the referenced Declarations are annexed hereto.

preliminary injunctive relief.” See also *Mitchell v. United States Dep’t of Hous. & Urban Dev.*, 569 F. Supp. 701, 704-05 (N.D. Cal. 1983) (enjoining eviction where scarcity of other housing).

In addition to the threat of actually being homeless, the anxiety and stress created by the inability to pay for life’s necessities, such as housing costs, also constitutes an irreparable harm. Indeed, one court found that the denial of disability benefits constitutes irreparable harm because it results in a failure “to purchase the necessities of life, including medication, and causes anxiety and distress which can aggravate existing conditions.” *Day v. Shalala*, 23 F.3d 1052, 1059 (6th Cir. 1994). All of the named plaintiffs are currently experiencing this type of suffering.

Furthermore, defendants’ continued violation of the rights of plaintiffs under the Due Process Clause separately constitutes an irreparable injury. “As a matter of law, federal courts at all levels have recognized repeatedly that constitutional rights violations constitute irreparable harm.” *Maxey v. Smith*, 823 F. Supp. 1321, 1328 (N.D. Miss. 1993); see also *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (Former 5th Cir. 1981).

Thus, plaintiffs have met the “irreparable harm” prong of the test for preliminary injunctive relief. Because such harm is immediate and continuing, issuance of a TRO is appropriate.

B. Plaintiffs Are Likely to Prevail On The Merits Of Their Claims

It is not necessary that plaintiffs establish success on the merits to a certainty, or even a substantial likelihood of ultimately prevailing, to obtain the requested preliminary injunctive relief. A plaintiff need only raise legal questions that are sufficiently serious to merit a more thorough investigation. See *Joseph Chambers v. Coventry Health Care*, 318 F. Supp. 2d 382, 389 (E.D. La. 2004). And, where a plaintiff makes a strong showing on the other three requirements for a preliminary injunction or TRO, it need only demonstrate “some” likelihood of

success on the merits. *Sophia Rdzanek, M.D. v. Hosp. Serv. Dist. #3*, Civ. No. 03-2585, 2004 U.S. Dist. LEXIS 503 (E.D. La. Jan. 15, 2004).

The Complaint and the Declarations annexed hereto more than satisfy the “likelihood of success standard,” as they demonstrate repeated failures of the defendants to comply with either the provisions of the Stafford Act or the Due Process Clause, with respect to the processing of applications and provision of Assistance. Faced with the overwhelming evidence of its failures, one imagines that FEMA will respond that it is immune from having to justify itself, and that its actions and inactions are beyond the review of this Court. Defendants may well claim that they are immune from liability under Section 5148 of the Stafford Act, which provides: “[t]he Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this chapter.” The argument is misplaced, and Section 5148 has no application here.

Once the President declared the Gulf Coast Region a disaster area, and Congress approved funds earmarked for, among other things, Assistance, FEMA lost any discretion over whether to distribute those funds to eligible victims. Indeed, as the law required, FEMA has already used those funds to provide Assistance to some – but certainly not all – victims. The named plaintiffs have the same entitlement to Assistance as those victims who have already received it, and FEMA does not have discretion to treat them inequitably by arbitrary excluding them from benefits under the Stafford Act.

In that regard, the Fifth Circuit, following the Supreme Court decisions in *Indian Towing Co. v. U.S.*, 350 U.S. 61 (1955), and *Rayonier, Inc. v. U.S.*, 352 U.S. 315 (1957), has held that “[o]nce the government makes a discretionary decision, the discretionary function exception

does not apply to subsequent decisions made in the carrying out of that policy, ‘even though discretionary decisions are constantly made as to how those acts are carried out.’” *Trevino v. General Dynamics Corp.*, 865 F.2d 1474, 1484 (5th Cir. 1989) (quoting *Wysinger v. U.S.*, 784 F.2d 1252, 1253 (5th Cir. 1986)). And, even if FEMA’s violations of Section 5174 of the Stafford Act are somehow discretionary and immune from judicial review, there is absolutely no basis upon which to claim that its violations of the nondiscrimination provisions of the Stafford Act, 42 U.S.C § 5151(a), or the Due Process Clause, which comprise nine separate claims in the Complaint, merit any such immunity. *See Lockett v. FEMA*, 836 F. Supp. 847, 854 (S.D. Florida 1993) (in an action to enjoin FEMA’s administration of housing assistance program, the court rejected Section 5148 immunity protection to the Section 5151(a) and Due Process Claims).

1. The Statutory Claims Have A Probability Of Success

Defendants have violated the Stafford Act based upon the following acts and omissions: (a) wrongfully applying the Shared Household Rule to deny Assistance to eligible applicants and conditioning receipt of Assistance on the filing of an SBA loan application; (b) failing to provide Assistance to eligible victims who applied at least 8 weeks ago; (c) failing to provide crucial information regarding the scope and conditions of the available Assistance; and, as a consequence, (d) violating the nondiscrimination provisions in Section 5151(a). (*See Compl.* ¶¶ 1, 3, 5, 7, 9, 10, 12, 14 and 15.) For each of these claims, plaintiffs have satisfied the “success on the merits” inquiry.

(a) Wrongful Application Of Shared Household Rule And SBA Loan Requirement

The starting point for ascertaining the merit of several of plaintiffs’ statutory claims is the fact that, under the Stafford Act each individual who lost his or her pre-disaster home because of

Hurricane Katrina is entitled to Assistance, either in the form of rental assistance or a trailer. 42 U.S.C. § 5174(b) and (c). There are no other eligibility requirements.

Yet, FEMA has denied Assistance to individuals, including named plaintiffs, on the wrongful presumption that the two applicants shared a pre-disaster “household” or were trying to perpetrate a fraud. Thus, as previously discussed, plaintiffs Smith, McWaters and Michelle Davis have all been denied benefits simply because they shared an address and/or phone number with another applicant. In other circumstances, FEMA denied Assistance to victims who did share a pre-disaster household but which was disintegrated as a result of the hurricane, such that the former household members had to seek Assistance separately.

These are misapplications of the Shared Household Rule, and constitute violations of plaintiffs’ rights under the Stafford Act. Nothing in the statute permits the denial of benefits to individuals or families who, as a matter of economic necessity, had been forced to share housing with others. To the contrary, Section 5174(a) states that any individual or family who by reason of a disaster is displaced from their place of residence is entitled to benefits.

Similarly, by requiring plaintiff Jones, and others, to apply for an SBA loan as a pre-requisite to applying for and receiving Assistance, defendants have not only added an extra-eligibility requirement, but violated the express prohibition in 42 U.S.C. § 5174(a)(2) against linking SBA loans with eligibility for or receipt of Assistance. (Compl. ¶ 30; Jones Decl. ¶ 12.) This extra-eligibility requirement is outside of statutory authority and, as such, must be struck down. *See Maislan Indus., U.S. v. Primary Steel, Inc.*, 497 U.S. 116, 134-35 (1990).

Separate and apart from violating plaintiffs’ rights under Section 5174, FEMA’s wrongful application of the Shared Household Rule discriminates on the basis of economic status in violation of 42 U.S.C. § 5151(a), since it denies Assistance to individuals and families who

were forced to live in shared housing because of limited economic means. The SBA loan requirement is intended to apply only to applicants who exceed a particular income threshold and, for that reasons, also discriminates against applicants based upon their economic status in violation of 42 U.S.C. § 5151(a).

(b) Delays Of Assistance That Constitute Denials

Several named plaintiffs, each of whom is eligible for Assistance, applied with FEMA for Assistance 8 weeks ago or more, and have yet to receive anything. This is presumptively unreasonable under the Stafford Act. While the statute does not state how long it should take FEMA to provide Assistance, the very nature of these benefits, *i.e.*, emergency housing in the wake of a disaster, makes it clear that time is of the essence, and that it must be provided in an expedited fashion. In fact, the legislative history of the 1998 amendments to the Stafford Act reflect the intention to provide housing assistance within 1 week: “We will mandate that families who have lost their homes and do not have insurance to cover temporary living expenses, will be placed in a temporary housing situation as expeditiously as possible, usually within a week’s time.” 134 Cong. Rec. H. 938, 945 (daily ed. Mar. 17, 1988) (statement of Rep. Ridge). Whether Congress intended emergency housing assistance to be provided within one week or two weeks, or even three weeks, it is clear that FEMA does not meet its obligations under the Stafford Act by telling plaintiffs for two months that their Assistance is “pending.”

Unlike plaintiffs Thurmond Price, Mary Pat Van Tino, Lyman Scott, Florence Jackson, Calvin Davis and Chris Davis, other disaster victims received their Assistance within one or two weeks of applying with FEMA. Because these named plaintiffs have not been treated equitably as compared to other applicants for Assistance, FEMA’s extraordinary delays also violated its obligation to process applications and distribute Assistance in an equitable manner, pursuant to 42 U.S.C. § 5151(a).

(c) **FEMA Failed To Provide Plaintiffs With General Information**

FEMA's failure to provide plaintiffs with crucial information regarding certain components of the housing assistance program, and of conditions governing their continued receipt of Assistance, constitutes further violations of Section 5174 of the Stafford Act. Without adequate information, applicants do not know what types of housing assistance are available and do not know how to obtain the housing assistance they need.

For example, plaintiffs Hayward, Colomb and P. Jackson received \$2,358 from FEMA for three months of rental assistance, without any information concerning the limitations governing the use of that money, the circumstances whereby continued rental assistance is available for up to 18 months and the specific criteria for being re-certified for such continued rental assistance. (See Compl. ¶¶ 35-37.) As a result, they used the rental assistance on food and other necessary expenditures that FEMA has since indicated are not appropriate, unknowingly impairing their ability to obtain continued rental assistance and subjecting themselves to recoupment by FEMA. Thus, FEMA now seeks to penalize plaintiffs for its own failure to provide adequate information by taking away further Assistance.

Similarly, FEMA failed to tell several plaintiffs of their eligibility for trailers or additional Assistance based on the size of their household or other circumstances, when they initially applied with FEMA for Assistance. By not providing plaintiffs with this basic information, FEMA violated its duties under Section 5174 of the Stafford Act.

Furthermore, FEMA's failure to provide plaintiffs with this crucial information has discriminated against lower income families, who are in greater need of the financial assistance, and tend to have larger families, in violation of Section 5151(a) of the Stafford Act.

2. **Violations Of The Due Process Clause**

Plaintiffs have also asserted six separate claims under the Due Process Clause. (*See* Compl. ¶¶ 2, 4, 6, 8, 11 and 13.) As demonstrated below, plaintiffs have shown a likelihood of prevailing on each of their claims under the Due Process Clause.

Due Process attached once the President declared an emergency and ordered FEMA to act. The named plaintiffs, and other applicants who met the eligibility requirements for Assistance, thereby gained a claim of entitlement and expectancy to those benefits. *See Goldberg v. Kelly*, 397 U.S. 254, 262 (1970) (A person has a property interest in “benefits [that are] a matter of statutory entitlement for . . . them.”) (footnote omitted).⁵ That being so, they were entitled to Constitutional due process.

FEMA failed to provide named plaintiffs, and similarly situated members of the class, with notice of their right to claim increased rental or trailer assistance based on the size of their household, and failed to notify plaintiffs of their right to claim trailer assistance and the procedure for seeking such assistance. Thus, plaintiffs lost the ability to claim certain benefits because defendants did not provide them with adequate notice of those benefits. This violates plaintiffs’ rights under the Due Process Clause. *See, e.g., L.E. Eguia v. Tompkins*, 756 F.2d 1130, 1138 (5th Cir. 1985) (due process requires notice before deprivation occurs).

Furthermore, the denial of assistance to applicants for failing to comply with extra-eligibility requirements that are not set forth in the Stafford Act also constitutes a violation of due process. In denying housing assistance to plaintiffs merely because they had the same pre-disaster address or phone number as another applicant, defendants denied benefits to applicants who met the eligibility requirements set forth in the Stafford Act, and thereby effectively imposed additional eligibility requirements. Similarly, by requiring that plaintiffs complete an

⁵ *See also Clark v. Prichard*, 812 F.2d 991, 995-96 (5th Cir. 1987) (discussing *Goldberg*, and fact that statutory entitlement to benefits constitutes a property interest).

SBA loan application as a pre-requisite to applying for and receiving Assistance, defendants imposed an extra-eligibility requirement not contained in the Stafford Act. This, too, violates the Due Process Clause. *See, e.g., U.S. Dep't Of Agriculture v. Murry*, 413 U.S. 508, 514 (1973) (rule that served to exclude families from receiving food stamps in contravention of statutory purpose violated due process).

Defendants failure to provide Assistance to plaintiffs who applied for such benefits more than 8 weeks ago also violates due process. Assistance is intended to immediately alleviate the misery and suffering of disaster victims who have lost their homes. By failing to deliver such Assistance within a reasonable amount of time, and instead placing them in “pending” purgatory, FEMA has effectively denied them Assistance. This violates their right to due process. *See United States v. Batson*, 782 F.2d 1307, 1312 (5th Cir. 1986) (delay in processing application for benefits can constitute a denial of due process).

Victims who have received benefits already – such as those plaintiffs who were given \$2,358 in rental assistance – are entitled under the Due Process Clause to continue to receive aid until notice of termination and the opportunity to be heard have been given. The test for the type of notice required and whether aid must continue pending a hearing was set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), where the Supreme Court listed the interests that must be balanced in each case to determine what form of notice and hearing the due process requires:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 335.

Application of these factors requires that FEMA provide timely notice to individuals of the nature and extent of their Assistance. First, the private interest affected is the potential loss of disaster relief benefits which is amongst the most severe types of deprivations. *See, e.g., Goldberg*, 397 U.S. at 264 (deprivation of welfare benefits “may deprive an eligible recipient of the very means by which to live”). Second, notice “reduces the number of erroneous deprivations” and is an essential safeguard against arbitrary government action which is the “touchstone of procedural due process.” *Matthias v. Bingley*, 906 F.2d at 1051-52; *Thibodeaux v. Bordelon*, 740 F.2d 329, 336 (5th Cir. 1984). Third, the public interest is furthered by notice since it results in fewer erroneous deprivations so that public agencies are not burdened by costs of providing health, safety, and other care resulting from the hardships of not receiving the basic necessities of life. The governmental cost of notifying recipients through letters about the nature and extent of their Assistance is relatively insignificant. Thus, the severe harm caused to disaster victims from not receiving notice and the benefits of notice reducing erroneous deprivations far outweigh the governmental cost of providing the notice.

For recipients who received the \$2,358 in rental assistance payments and are in danger of being discontinued because FEMA did not properly notify them about the continuing eligibility criteria, plaintiffs request a TRO to enjoin defendants from discontinuing recipients unless and until they have had proper notice and, thereafter, do not comply with the continuing eligibility requirements.

C. The Threatened Injury To Plaintiffs Outweighs Any Damage That The Injunction Could Conceivably Cause Defendants

The harm to plaintiffs absent injunctive relief and a TRO is homelessness, and the consequential impact upon their health, safety and well-being, and that of their families. This injury mounts daily, even for the plaintiffs not stuck in shelters, as they wear out their welcomes

in the overcrowded homes of friends, as their lives suffer more and more disruption, and as their ability to find or maintain employment decreases. At worst, the preliminary relief sought by plaintiffs will require the defendants to adjust their procedures for processing applications for Assistance to ensure that they comply with the requirements of the Stafford Act and the Due Process Clause, and the payment of monetary benefits already allocated by Congress and sitting in the public treasury to some possibly ineligible applicants. Under the circumstances, the scale tips strongly in favor of plaintiffs. *See Johnson v. United States Dep't of Agriculture*, 734 F.2d 774, 789 (11th Cir. 1984) (“relative harm to the government from granting a preliminary injunction pales when compared to the serious injury class members suffer when they are forced from their homes.”)

D. The Injunction Will Not Disrupt the Public Interest

An injunction has been held to “disserve the public interest” when it threatens public safety. *See Hayne Blvd Camps Pres. Ass'n, Inc. v. Julich*, 143 F. Supp. 2d 628 (E.D. La. 2001). The preliminary relief sought by plaintiffs will encourage public safety, rather than threaten it, by providing homes to the plaintiffs, and in turn reducing the incidence of persons with mental and emotional distress, illness, diseases, and substance abuse. The well being of these persons will have consequential benefits for their communities at large. Moreover, plaintiffs are serving the public interest in seeking to enforce rights protected by the Due Process Clause. *See, e.g., Wexler v. City of New Orleans*, 267 F. Supp. 2d 559, 568-69 (E.D. La. 2003).

CONCLUSION

For the forgoing reasons, the plaintiffs, on behalf of themselves and similarly situated class members, respectfully request that their motion for temporary restraining order and a preliminary injunction and be granted in its entirety.

Dated: New Orleans, Louisiana
November 18, 2005

Respectfully Submitted,

SCHULTE ROTH & ZABEL LLP

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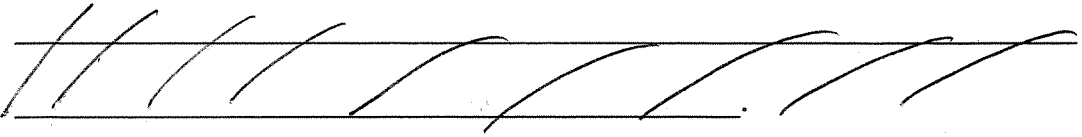
Attorneys for Plaintiffs

DECLARATION PURSUANT TO 28 U.S.C. § 1746

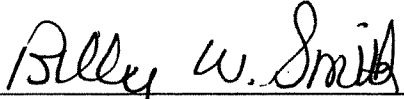
1. My name is Billy Smith.
2. When Hurricane Katrina struck I was a resident of Orleans Parish, New Orleans, LA.
3. My address was 6221 Waldo St., New Orleans, LA 70122. My home was destroyed in the hurricane.
4. I was a renter.
5. I lived with six men in a clean living facility for former drug addicts.
6. On approximately September 2, 2005, I was evacuated by the National Guard to a shelter in San Antonio, TX. The day after I arrived at the shelter, I registered with FEMA over the phone. The FEMA worker told me that someone else had used the phone number I provided to him and that my application for benefits would likely be frozen. I explained to him that I lived with six other men and that we shared a phone number. I provided the first names of the six men and told the FEMA worker that I did not know their last names.
7. Less than a week later, I called FEMA again, and a FEMA worker accused me of making multiple applications. She said that someone else had used my phone number. I explained my living situation to her, but he did not believe me. I got the impression that I was not going to receive any benefits.
8. The following day, I was surprised to receive a check for \$2000. I then purchased a bus ticket to the River Center shelter in Baton Rouge, LA.

9. On approximately September 15, 2005, I arrived at the River Center shelter, and thereafter, went to the Disaster Relief Center located near the shelter to apply for a trailer.
10. Two weeks after I arrived at the shelter, I received a packet of information from FEMA. The documents contained in the packet stated that I had to apply for a SBA loan to receive FEMA benefits.
11. The next day, I went to the Disaster Relief Center to submit my application for a SBA loan. The FEMA worker did not explain the SBA loan, and I did not understand it. I applied only to receive other benefits. I also applied for the \$2350.
12. Two weeks ago, I went to the Disaster Relief Center to check on the status of my applications. The FEMA worker told me that my applications for a SBA loan and the \$2350 were still pending. She also told me that she did not know when and if I would get a trailer. In addition, she said that I could get both a trailer and \$2350 and that I did not have to choose between the two.
13. On October 14, 2005, the River Center shelter closed, and I was moved to the Red Cross shelter in Baker, LA. Because I do not have a place to live and have been waiting for FEMA to make a decision regarding my applications, I am still living in the Red Cross shelter.
14. I have called FEMA twice every day for the past month to inquire about the status of my application. Most of the time, I am unable to get through, and when I am able to get through, they always tell me that my application is still pending.

15.



I declare under penalty of perjury that the foregoing is true and correct. Executed
on October 25, 2005, in Baton Rouge, Louisiana.



~~[Declarant's Name]~~

Billy Smith

DECLARATION PURSUANT TO 28 U.S.C. § 1746

1. My name is Reginald Jones.
2. When Hurricane Katrina struck I was a resident of Boothville in Plaquemines Parish.
3. My address was 41579 Highway 23, Boothville, LA 70038.
4. I was a homeowner.
5. I lived alone.
6. I was evacuated on August 29, 2005, by helicopter.
7. I was evacuated to the Belle Chasse Community Center in Belle Chasse, LA and stayed there for approximately one week. There were no FEMA workers at the center and no Disaster Relief Center nearby. The center was converted into a Disaster Relief Center so they bused us to the Melville Community Center in Melville, LA. I was forced to evacuate from Melville because of Hurricane Rita. I rented a car and drove to Monroe, LA to a Red Cross shelter. I was there for approximately three days. After Hurricane Rita passed, we were told to return to Melville, but I decided not to return because people were being mistreated at the Melville center and there was no to little security. Instead, I went to the River Center shelter in Baton Rouge, LA three weeks ago. On October 14, 2005, the River Center shelter closed, and I was moved to the Red Cross shelter in Baker, LA.
8. I am currently residing in the Red Cross shelter in Baker, LA.
9. My pre-disaster home is uninhabitable because it was destroyed by Hurricane Katrina.

10. Approximately seven weeks ago when I was at the Melville Community center, I applied for FEMA benefits. A volunteer at the center helped me with my application. Almost one week later, I received a check for \$2000. More than two weeks ago, I applied for a trailer at the Disaster Relief Center in Belle Chasse so I could get a trailer close to my former residence.
11. The same day I applied for the trailer, the FEMA worker told me that I was approved for \$2350 but that I would not get a trailer if I accepted the \$2350. They told me I had to choose between the two. I signed up for the trailer. I am still waiting to find out whether I will get a trailer.
12. When I was at the Disaster Relief Center, a FEMA worker told me that I had to fill out the SBA loan application to receive additional benefits. Because I needed more benefits, I applied for the loan but was turned down the same day.
13. I am still waiting to find out whether I will get a trailer. I am forced to stay in a shelter because I have no place to live. I have repeatedly asked about the status of my application regarding the trailer, but FEMA workers have told me that there is no facility to put my trailer near the area of my former residence. I do not know whether I will ever receive a trailer.
14. I have not received any benefits other than the \$2000. When I have inquired about the status of my FEMA benefits, a FEMA worker told me that they ran out of money. I do not know what is happening with my application, and no FEMA worker has ever given me any indication of what is happening and when I can receive my trailer or any other benefits to which I am entitled.

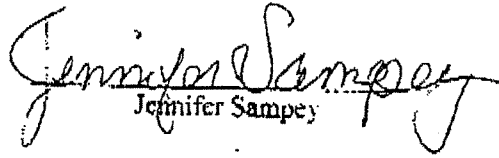
DECLARATION PURSUANT TO 28 U.S.C. § 1746

1. My name is Jennifer Sampey.
2. When Hurricane Katrina struck, I was a resident of Jefferson Parish.
3. My address was 1411 Claire Avenue, Gretna, LA 70053.
4. It was my primary residence.
5. I lived in a hotel room with my husband Michael Sampey and paid rent on a weekly basis.
6. Approximately 9 days after the hurricane struck, my husband and I were rescued by helicopter and taken to the Armstrong Airport in New Orleans. From there, we were flown to Robins Air Force Base in Atlanta, GA. We were then bused to Eatonton, GA to a shelter and stayed at the shelter for approximately 8-9 days. The mayor of Macon, GA selected us and several other people from the shelter and took us to a hotel in Macon. We stayed at the hotel for approximately 6 weeks. Then, a church group found an apartment for us, and Department of Family and Children Services offered to pay us one month's rent, which they have never paid. We are still staying at this apartment, but we do not know who is going to pay our rent.
7. A few days after the hurricane struck, I applied for FEMA aid by registering over the phone. I called FEMA repeatedly to update our address information. They told me they sent my \$2000 at the shelter in Macon. However, I never received it. Finally, one of my friends in Gretna stopped by my residence and found my check for \$2000 and mailed it to me in Georgia.

8. At the end of October, six FEMA representatives came to the hotel in Macon where we were staying at the time and explained the benefits to us. After I met with the representatives at the hotel, I called FEMA's 800 number to verify the information that was presented to me by the representatives. At that time, a FEMA worker told me that I had voluntarily withdrawn my application for benefits. That was news to me. I told the FEMA worker that I had never withdrawn my application and that my husband and I needed benefits. The FEMA worker told me that my application would be renewed and that an inspector would visit my residence. He told me that my application would be "active."
9. Since then, I have called FEMA repeatedly, and each time they tell me something different. One FEMA worker told me we needed a letter from the manager of the hotel in Groma to fax FEMA all of our personal information to verify that we lived in the hotel. I explained that I felt uncomfortable providing all of my personal information to the manager. In addition, I did not understand why they would not take my personal information directly from me. Another FEMA worker told me that we should appeal our application. I was confused because no decision had ever been made regarding my application, and I understood that my application was "active." There was nothing to appeal.
10. I have repeatedly called FEMA regarding my application, and I have had great difficulties getting through the phone lines. When I do get through, no one seems to know how to help or know what the status is on my application.

11. My husband and I are out of money, and we have nowhere to go. We are about to lose everything because we never got our rental assistance from FLIMA. We do not know how long we can stay in the apartment and are scared that we are going to end up homeless.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 17, 2005, in Macon, Georgia.


Jennifer Sampey

DECLARATION PURSUANT TO 28 U.S.C. § 1746

1. My name is Michelle Davis.
2. When Hurricane Katrina struck, I was a resident of Orleans Parish.
3. My address was 2821 Laurel Street, New Orleans, LA 70115.
4. It was my primary residence.
5. I am 32 years old and was a director of a day care center before the hurricane struck.
6. I lived with my mother and my six-year old daughter.
7. My daughter and I are currently staying in a hotel in Baton Rouge, LA.
8. I have not moved back to New Orleans because I no longer have a job there.
9. The day after the hurricane struck, my daughter and I evacuated Dale, MS and stayed in a motel. My mother evacuated after I did and eventually ended up staying with a family member. My daughter and I stayed at the motel for 3-4 days. We left the motel and then drove to Baton Rouge, LA because we ran out of money and my brother said we could stay with him in Baton Rouge. We stayed with my brother for one night, and my daughter and I stayed in my car for 3-4 days. We then went to a motel in Baton Rouge, where we have been staying for almost two months. Red Cross is helping us pay for the motel.
10. On September 4 2005, I sought FEMA aid by registering over the phone. The FEMA worker provided no information regarding benefits. He said someone would be contacting me soon.
11. Approximately one week later, \$2000 appeared in my bank account. I called the 800 FEMA number constantly to check the status of my application, and they

always said that it was "pending." During one of the telephone calls, a FEMA worker told me I would receive rental assistance.

12. Approximately two weeks after I received the \$2000, during one of the conversations with FEMA, I learned that I was ineligible because my mother registered for benefits using the same address I used when I registered. A FEMA worker told me that only one person from my address could receive benefits. I explained that I lived with my daughter in a hotel and that my mother was living somewhere else. The FEMA worker told me that I could appeal, but I did not understand how I could appeal the decision because my application was never decided. It is still "pending."
13. I have called FEMA almost every day, 4-6 times a day, and they always tell me that my application is pending. Every time I call, I receive inconsistent information.
14. This week, FEMA worker told me that I could get a travel trailer, but told me that I would have to pay for the space. I told the FEMA worker that I had nowhere to put the trailer. I asked that the trailer be in a FEMA park because I do not have the money to pay for the space for a trailer. A FEMA worker told me they would "work on it."
15. I am still waiting for FEMA to make a decision on my application. I learned recently that evacuees have to leave the motel by December 1, 2005. My daughter and I are living in a motel, and we have nowhere to go. I am running out of money, and I do not know what to do next.

I declare under penalty of perjury that the foregoing is true and correct. Executed
on November 16, 2005, in Baton Rouge, Louisiana.


Michelle Davis