

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

<i>LA UNION DEL PUEBLO ENTERO, INC.,</i>	§	
FRANCISCA ADAME, ALEJANDRO	§	
ALVARADO, ELIZABETH ALVARADO,	§	
MANUEL BENAVIDEZ, MARIA GALARDO	§	
JOSE GONZALES, AGUSTINA IGLESIAS,	§	
NOE JIMENEZ, VERONICA JIMENEZ,	§	
ERNESTO LOPEZ, NORMA LOPEZ,	§	
FRANCISCA PEREZ, ROSA ELIA	§	Civil Action No.
VILLARREAL, and CRUZ ALEJANDRO	§	
ZAMORA,	§	
Plaintiffs,	§	1:08-cv-_____
	§	
v.	§	
	§	
FEDERAL EMERGENCY MANAGEMENT	§	
AGENCY (FEMA),	§	
Defendant.	§	

COMPLAINT FOR INJUNCTIVE RELIEF

1. After Hurricane Dolly hit the South Texas coast on July 23, 2008, Defendant Federal Emergency Management Agency (FEMA) denied roughly half of all housing repair applications in the Rio Grande Valley, one of the nation’s poorest regions. Plaintiffs are and represent low-income families whose homes were damaged by Dolly. They seek a preliminary injunction to compel FEMA to comply with its non-discretionary duties under 42 U.S.C. §§ 5151(a) and 5174(j) to: (a) publicly disclose the standards that it uses to decide applications for housing repair assistance; and (b) decide these applications in an equitable and impartial manner, without using hidden internal rules that discriminate against the poor. Plaintiffs contacted FEMA in an effort to avoid litigation, but FEMA did not name its legal standards or agree to discuss

publishing them. Plaintiffs therefore seek injunctive relief to minimize ongoing irreparable harm to their families in the form of health hazards, displacement, and destruction of their property.

PARTIES

2. Plaintiff *La Union del Pueblo Entero* (LUPE) is a nonprofit membership organization comprised largely of farm workers whose primary residences are in Arizona, California, and Texas. LUPE was founded by Cesar Chavez to help meet the advocacy and organizing needs of farm workers. LUPE has operated an office in San Juan, Texas for decades, and now includes some seven thousand members in South Texas. LUPE uses its resources to conduct housing advocacy on behalf of its members. In response to Hurricane Dolly, LUPE staff organized meetings with officials and affected families to help members respond to flooding, utility restoration, and other damage to housing. In furtherance of LUPE's mission and purpose, LUPE helps members understand and access government housing benefits for which they qualify, including FEMA benefits. LUPE advocates for fair government treatment of low-income families, including disaster survivors. *See* www.lupenet.org. LUPE includes members who applied to FEMA for housing repair assistance, and whose applications were denied due to what FEMA called "insufficient damage."

3. The individual Plaintiffs reside in Cameron and Hidalgo counties. After their primary residences were damaged by Hurricane Dolly, they applied for housing repair assistance. FEMA denied their applications, in nearly all cases due to "insufficient damage," without telling them what legal standard was applied or what facts were relied upon to deny them assistance.

4. Defendant Federal Emergency Management Agency (FEMA) is an agency of the United States Department of Homeland Security, a cabinet department of the United States Government.

Congress charges FEMA with providing disaster relief to survivors under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, *et seq.*

JURISDICTION

5. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331.

VENUE

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(2) because a substantial part of the events or omissions at issue occurred in this district.

FACTS

A. Statutory and Regulatory Background

7. Congress allows each eligible family up to \$28,800 in total disaster relief services, including home repairs. 42 U.S.C. § 5174(c)(2) and (h).

8. Means testing of home repair assistance is forbidden except as to private insurance, so it is available to families regardless of their income or assets. *Id.* at § 5174(c)(2)(B).

9. Congress requires FEMA to “prescribe rules and regulations to carry out [housing repair assistance under 42 U.S.C. § 5174(c)(2)], including criteria, standards, and procedures for determining eligibility for assistance.” *Id.* at § 5174(j).

10. Congress also requires FEMA to issue regulations to “insur[e] that the distribution of [housing repair] assistance [is] accomplished in an equitable and impartial manner, without discrimination on the grounds of ... economic status.” 42 U.S.C. § 5151(a).

11. FEMA attempted to comply with §§ 5151(a) and 5174(j) by adopting regulations that only repeat the language of 42 U.S.C. § 5174(c)(2). *See* 44 C.F.R. § 206.117(b)(2) and (c).

B. Absence of Ascertainable Standards for Housing Assistance

12. FEMA's various statements of the legal standards that it applies to decide housing repair applications are so vague that they are not consistently understood or applied by applicants, inspectors, local officials, FEMA contractors, or even FEMA officials themselves.

13. FEMA states that housing repair assistance is available to "insure the safety or health of the occupant" without stating what immediacy or magnitude of risk qualifies a repair for coverage, so that FEMA may choose to repair only items that pose an immediate or severe threat, or it may choose to repair anything that bears a conceivable relationship to health and safety. 44 C.F.R. § 206.117(b)(2); *id.* at § 206.117(c).

14. FEMA also states that housing repair assistance is available to "make the residence functional," 44 C.F.R. § 206.117(b)(2)(ii), and defines "functional" so broadly as to approach meaninglessness: "an item or home capable of being used for its intended purpose." *Id.* at § 206.111.

15. FEMA writes the following to applicants for housing repair assistance: "By regulation, the FEMA Individuals and Households Program (IHP) can address only your emergency repairs and needs. This program is not intended to fully restore your property to pre-disaster condition."

16. FEMA regulations *allow* assistance to repair homes up to minimal building codes, even if this improves homes beyond their pre-disaster condition. 44 C.F.R. § 206.113(b)(5). But FEMA never says if, how, or when it applies this regulation.

17. Unlike FEMA, the U.S. Department of Housing and Urban Development has shown that ascertainable housing safety standards can be produced in regulations. *See* 24 C.F.R. § 982.401.

18. Unlike FEMA, the U.S. Department of Agriculture has shown that ascertainable housing safety standards can be produced in regulations. *See* 7 C.F.R. § 3560.103.

C. Hurricane Dolly---Disaster No. 1780

19. Hurricane Dolly hit the South Texas Coast on July 23, 2008, resulting in major disaster declaration number 1780, which made federal disaster relief available to families in three South Texas counties: Cameron, Hidalgo, and Willacy.

20. Disaster No. 1780 covers the Rio Grande Valley, one of the poorest regions of the United States, and a region with much housing that is poorly constructed.

21. FEMA admits that its home repair denial rate is unusually high for Hurricane Dolly.

22. A FEMA official explained the high denial rate as follows: “A lot of the homes built were built from second hand materials. So the damage was, in most cases, caused from the faulty building of the house, and not the storm.”

23. FEMA collects, maintains, and uses information concerning a category of home repair applications that FEMA labels “deferred maintenance,” but publicly available legal standards do not mention “deferred maintenance” or explain how FEMA ascertains this information or uses it in its housing repair assistance decisions.

24. FEMA has applied unascertainable legal standards to deny housing repair assistance to somewhere between ten and fifteen thousand low-income families in the Rio Grande Valley since Hurricane Dolly struck, roughly half of all applicants.

25. In response to a written request from Plaintiffs’ counsel, FEMA has not provided or agreed to discuss its legal standards for deciding home repair applications.

26. Absence of ascertainable FEMA standards for equitable and impartial distribution of housing repair assistance, as required by 42 U.S.C. § 5151(a), produces the following consequences:

- a. FEMA makes arbitrary, subjective decisions about who gets housing repair assistance, and how much assistance is provided in each case;
- b. FEMA housing damage inspectors do not use consistent methods to gather the facts upon which its housing repair assistance decisions are based; and
- c. applicants for housing repair assistance are not provided sufficient factual or legal information to determine whether to undertake the effort necessary to appeal FEMA's denial of assistance.

D. Individual Plaintiffs

27. The individual Plaintiffs suffered damage to their homes from Hurricane Dolly, applied to FEMA for home repair assistance, and were denied this assistance without being told what facts and legal standard FEMA relied upon to deny this assistance.

28. FEMA sent the individual Plaintiffs a form letter denying their applications for housing repair assistance. Quoted below is the complete and only explanation that FEMA provides for its denial of home repair assistance:

We recognize how difficult a time this is for you and your family and we understand that many people need help following a disaster. We are committed to providing you any help we can, including important information to begin your recovery.

The Federal Emergency management Agency (FEMA) and State of Texas have carefully considered all available information regarding your request for assistance. Our decision(s) about your request is listed below:

CATEGORIES

DETERMINATION

Housing Assistance	IID- Ineligible - Insufficient Damage
=====	=====
Total Grant Amount:	\$0.00

IID - Ineligible - Insufficient Damage

Based on your FEMA inspection, we have determined that the disaster has not caused your house to be unsafe to live in. This determination was based solely on the damage to your home that are related to this disaster.

Although the disaster may have caused some minor damage, it is reasonable to expect you or your landlord to make these repairs. At this time you are not eligible for FEMA assistance.

If you do not agree with our decision, you have the right to appeal. Please send us documents such as a statement from local officials, contractor estimates, etc. to show that the damage to your house was caused by the disaster and has caused unsafe or unlivable conditions.

a. Francisca Adame’s roof leaks and there is mold growing on her ceiling and walls, which will probably cost around \$1500 to repair or replace, but she was denied any housing assistance benefits due to insufficient damage.

29. Plaintiff Francisca Adame, age 74, lives alone in Edcouch, Hidalgo County, Texas. Ms. Adame has lived in this home for over 18 years.

30. Ms. Adame lives in extreme poverty. Her annual income is only \$6,756, comprised of social security disability benefits and Supplemental Security Income (SSI).

31. Hurricane Dolly damaged Ms. Adame’s roof, loosening shingles and blowing some off entirely. As a result, the roof leaks when it rains. Ms. Adame tries to prevent damage where she can, putting out buckets to collect the water that leaks through. However, portions of the ceiling are now rotting and mold has developed on some interior walls.

32. She has been advised that repairs will cost close to \$1500. Ms. Adame does not have insurance or any other means to make the repairs.

33. A FEMA inspector came to Ms. Adame's home around August 8, 2008. He was unable to communicate directly with Ms. Adame because he did not speak Spanish. Ms. Adame's son acted as a translator. The inspector remained on the ground when he took photographs of the property even though Ms. Adame told the inspector she did not think it was possible for him to adequately inspect the damaged roof from the ground.

34. FEMA sent Ms. Adame a letter denying housing assistance and other assistance on August 12, 2008, listing the reason for denial as "IID-Ineligible - Insufficient Damage" and providing nothing but the form explanation quoted in paragraph 28 above.

35. On October 1, 2008, Ms. Adame appealed the denial of benefits and requested a second inspection of her home.

36. Although she would like to obtain a written estimate of the repair costs in order to include that with a FEMA appeal, Ms. Adame cannot afford to pay for such an estimate. A contractor told her orally that he would charge \$600 for labor, but this free estimate did not include the cost of materials.

37. Ms. Adame has not received any written decision following her October 1, 2008 appeal.

38. On November 3, 2008, a TRLA advocate called FEMA about the appeal. A FEMA representative informed Ms. Adame's advocate that assistance had been denied because the damages to Ms. Adame's pre-disaster home were not caused by the disaster. Rather, FEMA claims the damages resulted from a lack of maintenance prior to the disaster. The FEMA representative advised Ms. Adame's advocate that Ms. Adame would need to submit a new appeal if she wished to challenge FEMA's decision that the damages were due to lack of maintenance.

b. Alejandro Alvarado and Elizabeth Alvarado must repair or replace a leaking roof, cracked walls and ceilings, a flooded and uninhabitable bedroom, and molding carpet, but they were denied housing repair assistance due to “insufficient damage.”

39. Plaintiff Alejandro Alvarado has but one home, where he has lived for 38 years with his family. The home is located in Lozano, Cameron County, Texas.

40. The Alvarados live in extreme poverty, with an annual income of about \$20,000 to support a household of five, including Alejandro’s wife Herminia (age 57), his daughter Elizabeth (age 31, who is also a Plaintiff because she originally applied for FEMA repair assistance) and Elizabeth’s two children, ages 14 and 2.

41. Elizabeth and her children have lived in the Alvarado home for their entire lives.

42. Hurricane Dolly caused structural and roofing damage to the Alvarados’ home. Dolly’s winds damaged the roof, blowing off shingles and boards creating holes in the roof and in the sides of the house through which water enters. Dolly also shook the house and caused large cracks to appear in the walls and ceiling. Water began to stream down the interior walls during Hurricane Dolly, and one of the house’s two bedrooms was flooded. Large leaks remain throughout the house whenever it rains. Pungent mold continues to grow in the house with rain and heat. The Alvarados fear for the health of their family because of the mold. To this day the mold remains in the carpet of the home.

43. A contractor estimated that it would cost \$3,300 just to repair the Alvarados’ roof.

44. The Alvarados do not have insurance or any other means to make the repairs.

45. The Alvarados applied for FEMA home repair assistance under 42 U.S.C. § 5174(c)(2).

46. FEMA sent an inspector to the Alvarados’ home, who listened to the Alvarados’ description of the damage caused by Dolly.

47. FEMA sent the Alvarados a letter denying home repair assistance on August 12, 2008, listing the reason for denial as “IID-Ineligible - Insufficient Damage” and providing nothing but the form explanation quoted in paragraph 28 above.

48. The Alvarados appealed and provided a contractor statement. As far as they know, their appeal remains pending at this time.

C. Manuel Benavidez’s roof leaked, pouring water into his kitchen, living room, dining room and laundry room, but he was denied any housing assistance benefits due to “insufficient damage.”

49. Manuel Benavidez, 67, and his wife, 70, have lived for about 30 years in El Charro, an informal subdivision or “*colonia*” located near San Juan, Texas.

50. Mr. Benavidez and his wife live in extreme poverty. Mr. Benavidez receives Social Security benefits of about \$590 a month. His wife receives Social Security benefits of about \$374 a month. They also receive Food Stamps in the amount of about \$34 a month.

51. When Hurricane Dolly struck the Texas coast, the torrential rain from the hurricane caused severe damage to Mr. Benavidez’s roof. The weight of the rainwater on the roof caused beams and/or flashings under the roof, and/or the roof itself, to warp and buckle, so that water poured down the kitchen wall, the living room wall, part of the dining room wall and into the laundry room.

52. Ever since the hurricane, water has come into the house when it rains through the leaks caused when the roof buckled in Hurricane Dolly.

53. Also, ever since the hurricane, insects enter the house through the places where Hurricane Dolly caused the house to leak. Mr. Benavidez has been spraying insecticide on the pests but this does not stop them from coming. He did not have this infestation before Dolly.

54. Mr. Benavidez does not have any insurance to cover the repairs he needs to make due to the damage caused by Hurricane Dolly, or any other means to make the repairs that are needed.

55. On or about August 6, 2008 Mr. Benavidez applied for FEMA home repair assistance under 42 U.S.C. § 5174(c)(2).

56. FEMA sent an inspector to Mr. Benavidez's house to inspect the damage. Mr. Benavidez told the inspector that the damage was to the roof, and offered the inspector a ladder to go up and look at the roof. The inspector declined to go up on the ladder and look at the damaged roof. She told Mr. Benavidez that she didn't need to do that, that her camera "could do miracles" and she just took pictures from inside the house and at ground level. She did not take pictures of the part of the roof that was seriously damaged by the hurricane. She only took pictures of the areas that were not seriously damaged.

57. On or about August 13, FEMA sent Mr. Benavidez a letter denying housing assistance, listing the reason for denial as "IID-Ineligible - Insufficient Damage" and providing nothing but the form explanation quoted in paragraph 28 above.

58. In September 2008, Mr. Benavidez submitted an appeal to FEMA, together with a contractor's estimate regarding the damage to the house and the estimated cost to repair it.

59. On or about November 3, 2008, a representative from Texas RioGrande Legal Aid, Inc. called FEMA on Mr. Benavidez's behalf, and spoke to a FEMA representative. The representative stated that on October 15, 2008, Mr. Benavidez's appeal was denied, due to "deferred maintenance."

60. On or about November 11, 2008, FEMA sent Mr. Benavidez a letter denying his appeal and denying his request for repair assistance. Quoted below is the complete and only

explanation that FEMA provided for its denial of Mr. Benavidez's appeal for home repair assistance:

You recently appealed one of FEMA's decisions regarding your application for disaster assistance. We have thoroughly reviewed your case including all of the new information and documents you provided. Our decision(s) about your appeal is listed below.

<u>CATEGORIES</u>	<u>DETERMINATION</u>
Home Repair =====	IID- Ineligible - Insufficient Damage =====
Total Grant Amount:	\$0.00

IID - Ineligible - Insufficient Damage

In a previous letter, we explained that you were not eligible for FEMA housing assistance because when FEMA inspected your home it was determined that the disaster had not caused your home to be unsafe to live in. This determination was based solely on the damage to your home that is related to this disaster. We explained that although the disaster may have caused some minor damage, it was reasonable to expect you or your landlord to make these repairs. We described the documents that you could submit to us to show that the damage to your home was caused by the disaster and has caused unsafe or unlivable conditions.

We have reviewed your appeal and any additional documents that you may have provided, along with the FEMA inspection(s) on your home. We have determined that our initial decision was correct that you did not suffer disaster related damage that made it unsafe for you to live in your home.

61. Mr. Benavidez seeks a ruling on whether FEMA fairly considered his application for housing repair assistance to minimize the deterioration of his home and to protect himself and his wife from harm.

e. Maria Gallardo's roof lost shingles, destroying her daughter's bedroom and causing water to stream into the home and mold to grow on the sheetrock and carpet, but she was denied housing repair assistance due to "insufficient damage."

62. Plaintiff Maria Gallardo has but one home, located in San Juan, Hidalgo County, Texas. Ms. Gallardo has lived there for over twenty years with her family, which at the time Hurricane Dolly struck included her husband, Rafael, her adult daughter Belinda, and Belinda's three children, ages 6, 4, and 11 months.

63. The Gallardos live in extreme poverty, with an annual income of about \$7,800. Rafael suffered a stroke and has partial paralysis on one side of his body and impaired vision as a result.

64. During Hurricane Dolly, the roof of the Gallardos' home was damaged. Shingles were torn off the roof by the wind, causing the roof to leak. The sheetrock in the ceiling and walls was soaked. The carpet got wet, and has begun rotting and growing mold and mildew. The bedroom where Belinda lived with her children was destroyed. Whenever it rains, water streams down the interior walls. There is a pungent odor of mold and mildew in the home.

65. The Gallardos do not have insurance or any other means to make the repairs.

66. The Gallardos applied for FEMA home repair assistance under 42 U.S.C. § 5174(c)(2).

67. FEMA sent an inspector to the Gallardos' home. The inspector did not speak Spanish, and Ms. Gallardo does not speak English, so Ms. Gallardo's daughter Belinda translated the conversation. The inspector told Ms. Gallardo, as translated by Belinda, that the home was unsafe to continue to live in.

68. On or about September 2, FEMA sent Ms. Gallardo a letter denying housing assistance, listing the reason for denial as "IID-Ineligible - Insufficient Damage" and providing nothing but the form explanation quoted in paragraph 28 above.

69. The Gallardos appealed FEMA’s decision on September 24, 2008. Ms. Gallardo appealed FEMA’s decision because of the statements the FEMA inspector made about her home being unsafe to live in and the reason listed in her denial letter from FEMA are a contradiction. Ms. Gallardo provided FEMA a contractor estimate for repairs included in the appeal.

70. Upon receiving FEMA’s denial letter for housing assistance, Belinda and her children were forced to relocate to Iowa to because of the serious health concerns associated with constant exposure to mold and mildew in children and infants. Belinda reasoned that without financial assistance from FEMA to make necessary repairs, her mother’s home would not be safe and habitable for her young children. However, she hopes to be able to return to Texas to live with her mother, because the family relied on sharing income and expenses to make ends meet.

71. According to the contractor estimate Ms. Gallardo obtained, it will cost approximately \$5,910.00 to make the necessary repairs to the Gallardo’s home.

72. On October 18, 2008, FEMA sent Ms. Gallardo a letter denying her appeal and denying her request for repair assistance. Quoted below is the complete and only explanation that FEMA provided for its denial of Ms. Gallardo’s appeal for home repair assistance:

You recently appealed one of FEMA’s decisions regarding your application for disaster assistance. We have thoroughly reviewed your case including all of the new information and documents you provided. Our decision(s) about your appeal is listed below.

<u>CATEGORIES</u>	<u>DETERMINATION</u>
Home Repair	IID- Ineligible - Insufficient Damage
=====	=====
Total Grant Amount:	\$0.00

IID - Ineligible - Insufficient Damage

In a previous letter, we explained that you were not eligible for FEMA housing assistance because when FEMA inspected your home it was determined that the disaster had not caused your home to be unsafe to live in. This determination was based solely on the damage to your home that is related to this disaster. We explained that although the disaster may have caused some minor damage, it was reasonable to expect you or your landlord to make these repairs. We described the documents that you could submit to us to show that the damage to your home was caused by the disaster and has caused unsafe or unlivable conditions.

We have reviewed your appeal and any additional documents that you may have provided, along with the FEMA inspection(s) on your home. We have determined that our initial decision was correct that you did not suffer disaster related damage that made it unsafe for you to live in your home.

73. Despite FEMA's denial of her appeal, Ms. Gallardo agrees with the FEMA inspector's assessment that her home is significantly damaged and is unsafe to live in. She is concerned that she and her family will be sickened by the rotting ceiling, walls, and carpeting in their home, which will likely get worse as the roof continues to leak.

f. Jose Gonzales was denied any housing assistance benefits to repair over \$7800.00 in damage to his recently refurbished, disability-accessible home, due to "insufficient damage."

74. Plaintiff Jose Gonzales's only home is located in Harlingen, Cameron County, Texas.

75. Mr. Gonzales is 50 years old and is quadriplegic. He and his wife Marcelina struggle to meet their needs using their annual food stamp allotment of \$756 and the \$7,644 of supplemental security income that Mr. Gonzales receives annually as a result of his total disability.

76. Prior to Hurricane Dolly, Mr. Gonzales had received assistance from a non-profit agency for various modifications that made his home more accommodating to a person with a wheelchair. Those modifications included a ramp, increasing the size of the bathroom, and

widening of some of the home's doors. The agency that assisted Mr. Gonzales with these modifications provided them for free, because he could not afford to pay for them.

77. Hurricane Dolly caused extensive structural and roofing damage to the Gonzales home. Dolly's winds blew shingles off three quarters of his roof and caused it to warp. The roof then leaked, causing damage to some interior walls of the home interior walls of the home and the growth of mildew and mold.

78. A licensed contractor has estimated that it will cost \$7,829.81 to repair the disaster-related damage.

79. The Gonzales family does not have any insurance to cover the repairs, or other means to make the repairs.

80. Mr. Gonzales applied for FEMA home repair assistance under 42 U.S.C. § 5174(c) (2).

81. FEMA sent an inspector to the Gonzales home. The inspector took pictures of the home and told Mr. Gonzales that he should await a decision by FEMA.

82. FEMA sent Mr. Gonzales a letter denying home repair assistance on August 5, 2008.

83. Mr. Gonzales went to the FEMA Disaster Recovery Center in Harlingen and asked a FEMA worker why he had been denied. The worker told him that his damages were not caused by the hurricane but rather were due to deferred maintenance, and that he should already be used to living in a home in these conditions.

84. Mr. Gonzales received a form letter with the identical language quoted in Paragraph 28 above as FEMA's only written explanation for his denial.

85. Mr. Gonzales submitted appeals on August 21, 2008, and on September 5, 2008, and provided a contractor statement.

86. FEMA denied Mr. Gonzales's appeals on October 14, 2008.

87. Quoted below is the complete and only explanation that FEMA provided for this second denial of home repair assistance:

We have thoroughly reviewed your case including all of the new information and documents you provided. Our decision(s) about your appeal is listed below:

CATEGORIES

Housing Assistance

=====

Total Grant Amount: \$0.00

DETERMINATION

INO- Ineligible - Other

=====

Ineligible- Additional Repair Assistance

We have reviewed your appeal for additional Home Repair and any documents you may have provided, along with the FEMA inspection(s) of your home. We have determined that the previous amount of assistance we provided was correct. As a result, your appeal is not approved and you are not eligible for additional FEMA assistance of this type.

This decision only applies to your appeal for FEMA assistance of this type. Your request for any other form of assistance is considered separately.

88. Mr. Gonzales claims that FEMA has violated his statutory right to procedures that comply with 42 U.S.C. § 5151(a), and seeks a ruling on this issue to ensure that his claim for housing repair assistance is resolved fairly, and as promptly as possible to minimize threats to his shelter and safety.

g. Agustina Iglesias's damaged roof and sheetrock have made her daughter sick, but she was sent an unintelligible demand for documentation of her damages and has been denied housing assistance benefits.

89. Plaintiff Agustina Iglesias's home is located in San Benito, Cameron County, Texas.

90. Ms. Iglesias, 44, is a single mother and the head of a household that includes five of her children, ages 18, 17, 15, 13, and 1.

91. Ms. Iglesias supports a family of six on approximately \$20,000 annually. She is a temporary worker and will take any job she can find to pay her bills. She has worked as a health care provider and in packaging frozen food. She currently is working as a roofer's assistant.
92. Hurricane Dolly caused extensive damages to Ms. Iglesias' home. Shingles came off the roof and water flowed in through the ceiling, causing sheetrock to break off the ceiling throughout the house. Additionally, at least one wall of her home has fallen down.
93. Ms. Iglesias cannot afford to fix her home and does not have any insurance to cover the necessary repairs.
94. Ms. Iglesias and her five children have no other home to live in, nor any friends or relatives with whom they can stay, and are forced to remain in their damaged house. One of Ms. Iglesias's daughters suffers from severe allergies, which have been aggravated because of the condition of the home. Her eyes are constantly watery and she is frequently sent home from school because of the severity of her reactions.
95. Ms. Iglesias applied for FEMA home repair assistance under 42 U.S.C. § 5174(c)(2).
96. On August 19, 2008, FEMA sent Ms. Iglesias an award letter that did not address her request for home repair assistance and awarded her only \$406.63 for damaged personal property.
97. Subsequently, Ms. Iglesias submitted documentation to prove that she owned her home, in an effort to obtain home repair assistance.
98. On October 24, 2008, FEMA sent Ms. Iglesias a letter requesting additional documentation to support her request for home repair assistance. FEMA's request for documentation was incomplete and confusing. Quoted below is the language requesting additional documentation:

This letter confirms that we have received your correspondence requesting an appeal of our decision in your application for Housing Assistance from the Federal Emergency Management Agency (FEMA). In order to evaluate your situation, we need additional documentation. ...

ONE ITEMIZED ESTIMATE from a licensed contractor for disaster related damages to the following items. (Your estimate must include a verifiable contractor name and telephone number.)

TWO ITEMIZED ESTIMATES from licensed contractors for disaster related damages to the following items. (Your estimates must include verifiable contractor names and telephone numbers.)

Heating systems

(N/A)

99. As far as Ms. Iglesias knows, her appeal remains pending at this time.

h. A tree fell on Noe and Veronica Jimenez's home, breaking three windows and causing water damage to exposed walls and ceiling, but they were denied any housing assistance benefits due to "insufficient damage."

100. Noe and Veronica Jimenez, both 68 years old, are an elderly married couple supporting their two grandchildren.

101. The Jimenezes live in extreme poverty, with an annual income of about \$11,760 to support a household of four, including themselves and their two grandchildren, ages 15 and 11.

102. The Jimenezes' only home is located in Edinburg, Hidalgo County, Texas. Mr. Jimenez inherited the home from his grandparents, and has lived there with his wife since 1977.

103. Hurricane Dolly caused damage to the Jimenezes' home. Dolly's winds caused a tree to fall on the roof, and winds damaged the siding on one side of the house and destroyed three windows. Water entered and damaged the exposed walls and ceiling.

104. A contractor estimated that it would cost \$1,980 to repair the home.

105. The Jimenezes do not have any insurance to cover the repairs, or other means to make the repairs.

106. The Jimenezes applied for FEMA home repair assistance under 42 U.S.C. § 5174(c)(2).

107. FEMA sent an inspector to the Jimenezes' home, who listened to the Jimenezes' description of the damage caused by Dolly.

108. On or about August 4, FEMA sent the Jimenezes a letter denying housing assistance, listing the reason for denial as "IID-Ineligible - Insufficient Damage" and providing nothing but the form explanation quoted in paragraph 28 above.

109. The Jimenezes appealed and provided a contractor statement. Their appeal remains pending. They seek to fairly resolve their claim for housing assistance as promptly as possible to minimize threats to their shelter, safety, and health.

i. Ernesto and Norma Lopez saw their entire house flooded, the whole roof and a bedroom destroyed, and find their home uninhabitable due to mold, but they were denied housing repair assistance because of allegedly "insufficient damage."

110. Ernesto and Norma Lopez live in poverty, with an annual income of about \$20,000 to support a household of four, including themselves and their two adult sons, Carlos and Leo.

Carlos is a policeman injured in the line of duty when a teenager shot him in the head.

111. The Lopezes' only home is located in Harlingen, Cameron County, Texas.

112. Hurricane Dolly caused damage to the Lopezes' home. Hurricane Dolly caused flooding of the entire house, and destroyed the entire roof and one of the bedrooms. Sheetrock is falling from the ceiling. There is mold growing throughout the house. The house is so damaged that the family suffered with respiratory problems and cannot live there, so they have moved into Ms. Lopez's mother's home.

113. The Lopezes do not have any insurance or other means to make the repairs.
114. The Lopezes applied for FEMA home repair assistance under 42 U.S.C. § 5174(c)(2).
115. FEMA sent an inspector to the Lopezes' home, who listened to the Lopezes' description of the damage caused by Dolly. The inspector asked Mr. Lopez if he wanted to "relocate." Mr. Lopez thought he meant to move permanently. It was not clear that the inspector was offering rental assistance.
116. FEMA sent the Lopezes a letter denying repair assistance due to insufficient damage.
117. The Lopezes appealed the FEMA denial on August 20, 2008, and made clear that they needed rental assistance because they have had to move out of the home until it is repaired.
118. In response to the appeal, FEMA sent a home repair grant of \$100.59.
119. A contractor estimated it will cost \$15,620.00 to repair the home.
120. The Lopezes appealed this amount based on the damage incurred and provided a contractor statement and pictures of the damage. Their appeal remains pending.
- j. Francisca Perez's home was flooded with two inches of water and then with the contents of her septic tank for several days, but she was denied any housing assistance benefits due to "insufficient damage."
121. Plaintiff Francisca Perez is the head of a household which includes her husband Enrique Silguero and Ms. Perez's three teenage children.
122. The five people in Ms. Perez's household struggle to meet their needs with an annual food stamp allotment of about \$8300 and the approximately \$7600 in supplemental security income that Mr. Silguero receives each year as a result of his disability. He suffers from several serious ailments that cause him to be disabled including arthritis and an ulcer.
123. Ms. Perez's only home is located in Elsa, Texas. She has lived there since 1994.

124. Ms. Perez's home suffered extensive damage as a result of Hurricane Dolly. Roof shingles were loosened and otherwise damaged and as a result, the roof leaked. The home was flooded with about two inches of water for two or three days. Portions of the floor warped and tiles loosened. Mold and mildew developed on her windows and portions of the ceiling and walls. Plumbing problems rendered Ms. Perez's bathtub and toilet unusable for over two weeks.

125. Waste water would back up out of the toilet and bathtub because the septic tank was overflowing with rain water.

126. Ms. Perez and her husband do not have insurance to cover the repairs, or other means to make the repairs. She had to clean the restroom three times a day for two weeks with bleach and other cleaning agents because the smell was unbearable. There was waste everywhere.

127. Ms. Perez's daughter, who suffers from asthma, had to go to the hospital because of the foul air near her home.

128. Ms. Perez applied for FEMA home repair assistance under 42 U.S.C. § 5174(c)(2). FEMA sent an inspector to inspect her home. The inspector ignored Ms. Perez's attempts to point out the disaster-related damages, walking away from her as she was speaking. He altogether neglected to inspect the bathroom with the non-functioning toilet and bathtub.

129. On August 12, FEMA sent Ms. Perez a letter denying housing assistance, listing the reason for denial as "IID-Ineligible - Insufficient Damage" and providing nothing but the form explanation quoted in paragraph 28 above.

130. Ms. Perez appealed on August 22, 2008, and provided a contractor statement, which was costly for her to obtain. Most contractors were too expensive and were charging between \$200 and \$250 to provide an estimate. Finally she found someone who said he would do it for a more

reasonable price. A licensed contractor estimated that \$6,650.00 would be needed for the disaster-related home repairs. He charged her about \$50.00 for his estimate.

131. Mrs. Perez took it upon herself to purchase a water pump and empty some of the septic tank water into her own backyard. It took two days to pump the waste out of the septic tank and into the yard. She expects rain to cause the problem to return.

132. FEMA denied her appeal on November 1, 2008. Quoted below is the complete explanation that FEMA provided for its second denial of home repair assistance:

You recently appealed one of FEMA's decisions regarding your application for disaster assistance. We have thoroughly reviewed your case including all of the new information and documents you provided. Our decision(s) about your appeal is listed below:

<u>CATEGORIES</u>	<u>DETERMINATION</u>
Home Repair	INO-Ineligible- Other
=====	=====
Total Grant Amount:	\$0.00

Ineligible- Additional Repair Assistance

We have reviewed your appeal for additional Home Repair any documents you may have provided, along with the FEMA inspection(s) of your home. We have determined that the previous amount of assistance we provided was correct. As a result, your appeal is not approved and you are not eligible for additional FEMA assistance of this type.

This decision only applies to your appeal for FEMA assistance of this type. Your request for any other form of assistance is considered separately.

133. Since Ms. Perez received her denial letter, her husband has been diagnosed with bronchitis. Other members of her family are also suffering with respiratory problems, and some are using nebulizers up to four times a day to alleviate their symptoms.

k. Rosa Elia Villarreal's roof blew off her home and landed in her yard, and her grandchildren have required emergency medical treatment for mold-related illness because of the mildew in their home, but she was denied housing repair assistance.

134. Plaintiff Rosa Elia Villarreal is the head of a household which includes her two daughters and three grandchildren, ages 5, 4, and 1.

135. Ms. Villarreal and her family live in extreme poverty. Ms. Villarreal works and earns an annual income of about \$4,800 and her daughter works and earns an annual income of \$10,400. Both incomes support a household of three adults and three children.

136. Ms. Villarreal's only home is located in Edinburg, Hidalgo County, Texas.

137. Hurricane Dolly caused extensive structural and roofing damage to the Villarreal's home. Dolly's winds damaged the laminate roof, blowing it off and into the yard. Her house has no laminate roof at this time.

138. Because there is no roof, rainwater is leaking into the home and has caused damage to the walls and the ceiling. Mold is spreading throughout the house. Dolly also shook the house so that cracks appeared in the walls and ceiling.

139. Ms. Villarreal and her family lost personal property such as mattresses, furniture, and clothing in the home during the disaster.

140. Ms. Villarreal's grandchildren have had to be taken to Edinburg Children's Hospital emergency room several times for treatment for allergies due to the mold.

141. A contractor estimated that the repairs to the home will cost \$5300.00 for labor and \$4701.98 for materials.

142. Ms. Villarreal does not have insurance or other means to make the repairs.

143. Ms. Villarreal applied for FEMA home repair assistance under 42 U.S.C. § 5174(c)(2).

144. FEMA sent an inspector to Ms. Villarreal's home. The inspector did not inspect all of the damage. The inspector did not climb up to see the roof damage and did not enter the damaged parts of the home. The inspector did not speak Spanish.

145. FEMA sent Ms. Villarreal a letter denying home repair assistance on August 18, 2008.

146. Quoted below is the complete and only explanation that FEMA provided for its denial of home repair assistance:

We recognize how difficult a time this is for you and your family and we understand that many people need help following a disaster. We are committed to providing you any help we can, including important information to begin your recovery.

The Federal Emergency Management Agency (FEMA) and State of Texas have carefully considered all available information regarding your request for assistance. Our decision(s) about your request is listed below:

<u>CATEGORIES</u>	<u>DETERMINATION</u>
Housing Assistance	INR- Ineligible – No Relocation
Medical	IID – Ineligible – Insufficient Damage
Personal Property	IID – Ineligible – Insufficient Damage
=====	=====
Total Grant Amount:	\$0.00

INR - Ineligible – Will Not Relocate

Based on our records, you told the FEMA inspector that you were not going to move from your damaged home while repairs are being made. Since you do not plan to move, you are not eligible for FEMA rental assistance at this time.

If you do need to move while repairs are being made, please contact the FEMA helpline.

147. Ms. Villarreal appealed and provided a contractor statement.

148. FEMA sent Ms. Villarreal another letter on November 11, 2008, but it awarded her only rental assistance and did not mention decisions on any other form of FEMA assistance. She is not certain whether FEMA is still considering her application for housing repair assistance.

1. Cruz Alejandro “Alex” Zamora’s house moved on its foundation and was rendered structurally unstable, forcing his family to move into a credit-card financed travel trailer for safety, but he was denied any housing assistance benefits due to “insufficient damage.”

149. Cruz Alejandro “Alex” Zamora is a disabled U.S. Army veteran whose only home is located in Harlingen, Cameron County, Texas. He has lived there since October 2001.

150. Mr. Zamora is the head of a household of five, which includes his wife, Leticia Zamora, and their three children, ages 14, 12, and 9.

151. Mr. Zamora and his family live close to the poverty line. As a partially disabled U.S. Army veteran, Mr. Zamora receives \$471 a month in U.S. Veterans Administration benefits. He also works as a computer information-technology consultant for a company called “Small Business Computer Services,” although work there is only available to him sporadically. He has earned approximately \$20,000 from this work in 2008 to date.

152. Hurricane Dolly caused extensive structural damage to the Zamoras’ home. The family took shelter in their house during the storm. The winds shook the house so hard that the family heard a cracking, popping noise, and felt the house move on its foundation.

153. Afterward, the house was so unstable that an adult stepping on the floor would cause the walls to tremble.

154. The house was structurally stable until it moved on its foundation during the hurricane.

155. Due to the damage from the hurricane, one wall of the house has bent inward, and there are cracks in the sheetrock of the house.

156. Dolly's winds also damaged the roof of the house, blowing off shingles and boards so that water entered the house and caused damage.

157. The Zamoras do not have any insurance to cover the repairs, or other means to make the repairs that are needed.

158. On or about August 5, 2008, the Zamoras applied for FEMA home repair assistance under 42 U.S.C. § 5174(c)(2).

159. FEMA sent an inspector to the Zamoras' home. Mr. Zamora explained what happened, and tried to show the inspector the damage. The inspector was rude to the Zamoras and did not allow them to say anything or point out any of the damages.

160. On August 12, FEMA sent Mr. Zamora a letter denying housing assistance, listing the reason for denial as "IID-Ineligible - Insufficient Damage" and providing nothing but the form explanation quoted in paragraph 28 above.

161. Mr. Zamora and his family did not feel safe living in a house that was no longer structurally sound because the hurricane had damaged it so much that the walls trembled when a person walked on the floor.

162. Since FEMA had denied them aid to repair the house, on or about August 22, 2008, Mr. Zamora and his wife bought a used, 1987 Skylark travel trailer, advertised by the seller as "Sleeps 4," in order to have a safe place to live.

163. The Zamoras moved into the trailer, and are living there now because it is not safe for them to live in their house, due to the damage caused by the hurricane.

164. Because the Zamoras did not have the money to pay upfront for the \$3,000 cost of the travel trailer, they had to use a credit card to finance the purchase. The Zamoras would not have spent \$3,000 to buy this trailer if their house was safe to live in.

165. The trailer that the Zamoras bought, which is designed as a travel trailer big enough to sleep up to 4 people, is not really large enough for a 5-member family to live in, but the Zamoras did not have money to buy a bigger trailer.

166. The five-member Zamora family, including the three school-age children, is now living in overcrowded conditions in this trailer, because without FEMA assistance they cannot restore their house to a condition that would be safe to live in.

167. On top of the other expenses that the Zamoras have incurred because FEMA has not provided aid to repair their house, they also now have to pay \$110 a month to rent a space for the travel trailer in a mobile home park.

168. Mr. Zamora appealed from FEMA's denial, submitting his appeal by facsimile to FEMA on September 25, 2008.

169. Since September 25, 2008, FEMA has neither granted nor denied the appeal, or even acknowledged receiving it.

CAUSES OF ACTION

170. FEMA violates 42 U.S.C. §§ 5151(a) and 5174(j) by failing to adopt and implement ascertainable standards necessary to insure that housing repair assistance under 42 U.S.C. § 5174(c)(2) is made available to victims of Hurricane Dolly in an equitable and impartial manner.

171. FEMA violates 42 U.S.C. § 5151(a) by implementing an unpublished and unascertainable “deferred maintenance” policy that effectively disqualifies low-income families from housing repair assistance, promoting rather than preventing economic discrimination.

172. Each FEMA decision to provide, limit, or deny housing repair assistance under 42 U.S.C. § 5174(c)(2) is a final agency action that is reviewable under 5 U.S.C. § 704.

173. FEMA’s failure to publish and apply ascertainable standards for its housing repair assistance decisions proximately causes ongoing irreparable injury to the individual Plaintiffs and their families, the organizational Plaintiff’s members, and the organizational Plaintiff itself in the form of danger to health, displacement, and unrecoverable costs.

174. The judicial review provisions of the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*, empower this Court to issue all injunctive relief necessary to secure FEMA’s compliance with 42 U.S.C. §§ 5151(a) and 5174(j).

PRAYER

175. WHEREFORE, Plaintiffs pray that the Court grant them all equitable relief necessary to ensure that FEMA housing repair assistance determinations in Disaster No. 1780 are made in compliance with 42 U.S.C. §§ 5151(a) and 5174(j), including:

- a. enjoin FEMA to publish and apply ascertainable standards to make its housing repair assistance decisions;
- b. enjoin FEMA to reconsider all denials of housing repair assistance for Disaster No. 1780 using the standards stated in paragraph a above;
- c. enjoin FEMA to provide timely and adequate notice of its actions to applicants for home repair assistance;
- d. award Plaintiffs their costs and litigation expenses; and
- e. award all other relief that the Court deems just and proper.

Respectfully submitted,

/s/

November 20, 2008

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2008, I caused a true and complete copy of the foregoing document with any referenced exhibits and attachments to be served upon the following counsel for Defendant FEMA by overnight mail:

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