

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

YOLANDA ANDERSON, GILDA BURBANK,)
ALLEN HARRIS, DONNA JOHNIGAN,)
ODESSIA LEWIS, EMELDA MAY, SYLVIA)
MOTEN, EMELDA PAUL, HILDA JOHNSON,)
CYNTHIA BELL, LOLITA GIBSON, NICOLE)
BANKS, JUDITH WATSON, GLORIA)
WILLIAMS, MARY ANN WRIGHT,)
CATRICE DOUCET, LINDA DeGRUY, and)
KIM PAUL, in their own right and as)
representatives of all similarly situated displaced)
New Orleans, Louisiana public housing)
residents,)

Plaintiffs,)

v.)

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

Defendants.)

CIVIL ACTION NO. 06-3298

SECTION "B"

JUDGE LEMELLE

MAGISTRATE 5

**MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

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I. INTRODUCTION

Plaintiffs are displaced residents of New Orleans public housing. Defendants are the Housing Authority of New Orleans (“HANO”), the Department of Housing and Urban Development (“HUD”), and certain of their agents and officers sued in their official capacities. Plaintiffs seek an order from this Court to preserve the *status quo* by preliminarily enjoining Defendants from acting on their recently-announced plans to illegally demolish thousands of the city’s public housing units, and directing Defendants to take the necessary and ordinary steps to maintain those habitable or efficiently repairable units, and to cease obstructing Plaintiffs’ return to such units.¹

In late August 2005, thousands of New Orleans’ citizens fled their homes in the wake of Hurricane Katrina. Those citizens included approximately 5,000 families that resided in public housing. Since that time, Defendants have used the excuse of Hurricane Katrina to shutter and keep empty nearly all of the city’s public housing, even though many of those homes were not damaged or not significantly damaged by the storm and despite Defendants’ knowledge that the displaced residents desperately wish to return home. As a result of Defendants’ actions, thousands of New Orleans’ residents have been improperly and unnecessarily displaced from their homes for more than 11 months, and thus hindered from returning to New Orleans, resuming their roles as full and contributing citizens of the city, and participating in the city’s recovery.

¹ In 2002, HUD placed HANO in receivership. As a result, through its management team, HUD is responsible for managing the day-to-day operations of the housing authority, including the assessment of damages to HANO’s public housing units and redevelopment plans. (*HUD Names New Recovery Advisor and Receiver to Advance Current HANO Hurricane Recovery Efforts* (Apr. 14, 2006), at <http://www.hud.gov/news/release.cfm?content=pr06-043.cfm>., attached as Ex. A to the Declaration of Ross B. Bricker, filed concurrently herewith.) For this reason, unless otherwise noted, Plaintiffs refer to the actions taken by either HANO or HUD as those of Defendants collectively, and the relief sought herein also is sought from Defendants collectively.

Defendants' actions to deny Plaintiffs access to their homes and the planned demolition of those homes violate Plaintiffs' rights under the U.S. Housing Act of 1937, Plaintiffs' rights under the terms of their leases and Louisiana landlord-tenant law, Plaintiffs' rights to procedural due process of law and Plaintiffs' rights under the Fair Housing Act. As shown below, Plaintiffs can demonstrate a likelihood of success on the merits on each of those claims, any one of which would fully justify injunctive relief. Thus, this Court should issue a preliminary injunction to preserve the *status quo*, to provisionally halt Defendants' planned and illegal demolition of New Orleans' public housing, to take steps to maintain the habitability of these units, and to cease obstructing Plaintiffs' return to those units that are habitable or repairable. Absent preliminary injunctive relief, Plaintiffs will be irreparably harmed.

This Memorandum is divided into three parts. Part I sets out the procedural posture of this case. Part II contains a statement of facts relevant to Plaintiffs' Motion for Preliminary Injunction. Finally, in Part III, Plaintiffs demonstrate the legal basis for preliminary injunctive relief.

II. PROCEDURAL HISTORY

Plaintiffs filed their complaint on June 27, 2006. The complaint asserts eight causes of action against Defendants. Specifically:

- Counts One and Two allege that Defendants' actions had a racially disparate impact and a racially discriminatory intent in violation of the Fair Housing Act.
- Count Three alleges that Defendants violated the Fair Housing Act and the Administrative Procedure Act by disregarding the Fair Housing Act's requirement that HUD administer its programs to further the Act's anti-discriminatory purposes.
- Count Four alleges that Defendants violated the requirements of the U.S. Housing Act of 1937 requiring notice, consultation, and relocation of residents to comparable housing prior to any demolition of public housing.

- Counts Five and Six allege that Defendants violated their obligations under both the terms of the Plaintiffs' leases and the Louisiana Civil Code's provisions governing landlord-tenant relations.
- Count Seven alleges that Defendants violated the Fifth and Fourteenth Amendments to the United States Constitution by discriminating against Plaintiffs on the basis of their race, in violation of the Equal Protection Clause, and by depriving them of their property interests in their homes without notice or the opportunity for a hearing in violation of the Due Process Clause.
- Count Eight alleges that the Defendants violated international law by not permitting Plaintiffs to return to their homes after they were "internally displaced" by Hurricane Katrina.

The Complaint seeks damages and injunctive relief. Damages are available for violations of the Fair Housing Act, 42 U.S.C. § 3613(c)(1), violations of Plaintiffs' constitutional rights to Due Process, 42 U.S.C. § 1983, violations of the U.S. Housing Act of 1937, *see Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 66-67 (1992), and breach of Defendants' obligations under Plaintiffs' lease, *see Pelleteri v. Caspian Group Inc.*, 851 So.2d 1230, 1237-39 (La. App. 4th Cir. 2003). Plaintiffs also are entitled to injunctive and declaratory relief under the Administrative Procedure Act, 5 U.S.C. §§ 702, 706; the Fair Housing Act, 42 U.S.C. § 3613(c)(1), and the Civil Rights Act, 42 U.S.C. § 1983.

The preliminary injunctive relief Plaintiffs now seek is designed to maintain the *status quo* pending final adjudication of Plaintiffs' claims on the merits. This injunctive relief includes an order enjoining Defendants from acting on their announced plan to illegally demolish thousands of now empty, but habitable, public housing units. Plaintiffs also seek injunctive relief directing Defendants to take appropriate steps to maintain the habitable public housing stock in New Orleans, including by repairing those units that can be efficiently repaired, and to stop blocking the return of Plaintiffs to their habitable units. Without provisional injunctive relief of this nature, Defendants will go forward with their plans to demolish Plaintiffs' homes

and this Court will be stripped of the opportunity to meaningfully review Plaintiffs' claims before Defendants' actions, and the irreparable harm to Plaintiffs, reach an irreversible state.

By separate motion, Plaintiffs request that this Court promptly schedule an evidentiary hearing on their preliminary injunction motion and, in the interim, allow expedited, but targeted, discovery to be used in support of Plaintiffs' claims at that hearing. Plaintiffs intend to seek leave to file affidavits and other evidence to supplement the evidentiary materials attached as exhibits to the Declaration of Ross B. Bricker, filed concurrently herewith.

This is a class action lawsuit. Plaintiffs sue Defendants in their own right and as representatives of all similarly situated persons displaced from, and prohibited from returning to, New Orleans public housing. Pursuant to Local Rule 23.1.B, Plaintiffs will move for class certification within 90 days of filing their complaint (by September 25, 2006).

III. STATEMENT OF FACTS

Before Hurricane Katrina and according to published HANO reports, some 5,146 families lived in public housing developments in New Orleans—all of whom are African-American.² Another 3,000 or so public housing units were in existence at that time, but were kept vacant by HANO despite the more than 8,000 families that had applied for public housing but were placed on a waiting list, with many more unable to get their names on the list at all.³

Even before Katrina, the demand for public housing greatly outstripped supply, with more people on the waiting lists for public housing and rental assistance than in public housing or receiving rental assistance. And even the number of people on the waiting list was artificially

² (Bricker Decl. Ex. B, *HANO Post-Katrina Frequently Asked Questions* (hereinafter, "HANO FAQ"), <http://www.HANO.org/FAQ072006.pdf> (last visited Aug. 6, 2006); Bricker Decl. Ex. C, *HANO Residents Characteristics Report 2005-06*, available at <http://pic.hud.gov/pic/RCRPublic/rcrha.asp>.)

³ (Bricker Decl. Ex. D, *HANO Annual PHA Plan for Fiscal Year Beginning 10/2003*, at 8-9, available at <http://www.hud.gov/offices/pih/pha/approved/pdf/03/la001v01.pdf>.)

low: when the waiting list for Section 8 vouchers was opened in 2001, HANO received 19,000 applications and then closed the list to new applicants.⁴

Defendants' actions have prevented the vast majority of public housing residents from returning to their homes after Katrina

Today, almost one year after Katrina, Defendants have allowed only approximately 1,000 families to return to their homes in the city's public housing developments.⁵ Plaintiffs are among those former residents who remain displaced, who want nothing more than to return to their homes, but whom Defendants are barring from returning even though the bulk of New Orleans' public housing is habitable or efficiently repairable. Even Defendants' plan for the future would only open an additional 1,000 units over the course of the next several months, leaving over 60% of the prior public housing residents displaced indefinitely, despite the large number of closed units that are already habitable or could be restored to habitability with minimal work.⁶

On August 29, 2005, Hurricane Katrina hit the Gulf Coast, forcing families residing in New Orleans public housing to temporarily depart their homes. Unlike many other families who had the financial wherewithal to assist them in finding temporary substitute housing, most families residing in public housing units had no one but the government to turn to. As all who have watched the news are aware, the government's answer to this crisis was to eventually corral those left behind by Katrina—largely represented by the city's poor—into the Superdome and Convention Center and then ship them off to other cities to live in shelters or hotels.⁷

⁴ (Bricker Decl. Ex. E, *HANO Annual PHA Plan for Fiscal Year 2003*, at 7, available at <http://www.hud.gov/offices/pih/pha/approved/pdf/02/la001v03.pdf>.)

⁵ (Bricker Decl. Ex. B, HANO FAQ.)

⁶ *See id.*

⁷ (*See* Bricker Decl. Ex. F, Gwen Filosa, *At least 10,000 find refuge at the Superdome*, THE TIMES-PICAYUNE (Aug. 29, 2005), available at <http://www.nola.com>.)

Since then, the large majority of those who remain displaced have not only been separated from their homes and the surrounding communities but have been dispersed throughout other parts of Louisiana, Texas, Georgia or other states, with no viable opportunity to return to their homes because of Defendants' actions.⁸ As displaced persons, many Plaintiffs have encountered stigmatization and discrimination. Many have been separated from their families, while others are forced to live in cramped and inadequate conditions in the homes of family members. Many more have been unable to find employment in their new cities.

For Plaintiffs and similarly-situated public housing residents, continued displacement means inadequate access to health care for both themselves and their children; inadequate access to public transportation, thus limiting Plaintiffs' ability to build new community networks and seek employment; the inability to return to jobs in New Orleans that may remain open for only a short while longer; a loss of contact with family and friends; and a general concern for the overall safety and welfare for themselves and their children. It is, in essence, a government-sanctioned diaspora of New Orleans' poorest African-American citizens.

Defendants have prevented Plaintiffs from returning to their homes despite no damage, or only minor to moderate damage

Plaintiffs' continued displacement is unnecessary. In its initial assessment of the condition of its public housing inventory, HANO noted that the St. Thomas and Fischer developments experienced only minor damage; Iberville, Guste, C.J. Peete, Lafitte and B.W. Cooper experienced minor to moderate damage (though around 300 units in B.W. Cooper experienced *no* flooding and little wind damage); and St. Bernard, Florida and Desire sustained

⁸ (Bricker Decl. Ex. B, HANO FAQ; *see also* Bricker Decl. Ex. G, *Harsh urban renewal in New Orleans: Poor, black residents cannot afford to return, worry city will exclude them*, MSNBC.com (Oct. 12, 2005), <http://www.msnbc.msn.com>.)

some severe damage.⁹ (But even in these cases, the presence of damage was often restricted to first floors, not upper floors where the flooding did not reach.)¹⁰ Thus, according to Defendants' own assessment, most public housing developments had units that could be reopened with some work. In fact, shortly after Hurricane Katrina, Defendants announced that they intended to clean, repair and open Iberville first, followed by C.J. Peete, a small quadrant of about 300 units at B.W. Cooper, and Lafitte.¹¹

Many of the closed public housing units need no more than a thorough cleaning to be fully livable again. Some units experienced little or no flooding. Moreover, most developments are made of solid brick and concrete construction, protecting the buildings from serious wind damage and making mold and mildew easier to eliminate. Indeed, some residents who have been able to examine their homes found their apartments free of mold and mildew. Many have also noted that the damage from minor flooding could be remedied by cleaning floors and baseboards with bleach before moving back in. Much of the work required is disposal and clean-up that residents are willing to undertake themselves. Furthermore, even in some buildings where the ground floor units suffered flood damage, some units on the second and higher floors suffered little to no damage.

Defendants claim to be "working diligently to get more public housing units opened," but their actions betray their words.¹² Defendants have erected fences topped with razor wire around

⁹ (Bricker Decl. Ex. B, HANO FAQ.)

¹⁰ (See Bricker Decl. Ex. H, Bill Sasser, *Locking out New Orleans' Poor* (June 12, 2006), http://www.salon.com/news/feature/2006/06/12/nola_housing/index_np.html.)

¹¹ (Bricker Decl. Ex. B, HANO FAQ.)

¹² (Bricker Decl. Ex. I, *New HANO Recovery Team Address Resident Concerns* (May 3, 2006) <http://www.hud.gov>.)

St. Bernard and Florida and installed shutters over the windows and doors at Lafitte.¹³ Those units that have been sealed up will ensure that conditions such as mold, mildew, and stench will worsen.¹⁴ Moreover, Defendants refuse to perform even basic maintenance to many units that suffered little to no damage, leaving the apartments not cleaned with broken fixtures and windows. Worse yet, HANO recently announced massive employee lay-offs.¹⁵

Indeed, Defendants' actions appear in every way to be part of an overall plan to permanently prevent the return of the public housing residents, despite the fact that these residents have leases that grant them property interests in their units, of which they cannot be deprived without due process of law. Plaintiffs have certain rights under these leases, such as the "right to exclusive use and occupancy of the dwelling unit."¹⁶ Defendants also have certain obligations under the terms of the lease, including "[t]o maintain the dwelling unit and the project in a condition that is decent, safe, sanitary, and in good repair."¹⁷ These leases renew automatically for 12-month terms, and Plaintiffs have done nothing to terminate the leases.¹⁸ Nor have Plaintiffs been given notice of eviction or termination of their leases, or the opportunity for a grievance hearing prior to termination of their leases or a judicial eviction procedure, as are

¹³ *Id.*; (Bricker Decl. Ex. J, Susan Saulny, *Clamoring to Come Home to New Orleans*, THE NEW YORK TIMES (June 6, 2006), available at <http://www.nytimes.com>; Bricker Decl. Ex. K, Anne Rochell Konigsmark, *New Orleans Public Housing Plan Set*, USA TODAY (June 14, 2006), available at <http://www.usatoday.com>; Bricker Decl. Ex. L, Robert Little, *Barred From Coming Home*, THE BALTIMORE SUN (Feb. 19, 2006), available at <http://www.baltimoresun.com/news/weather/hurricane/bal-te.housing19feb19,0,2652796.story?page=3&coll=bal-nationworld-utility>.)

¹⁴ (Bricker Decl. Ex. H, Bill Sasser, *Locking out New Orleans' Poor* (June 12, 2006), http://www.salon.com/news/feature/2006/06/12/nola_housing/index_np.html.)

¹⁵ (Bricker Decl. Ex. M, Ed Anderson, *HANO letting 113 staffers go*, THE TIMES-PICAYUNE (July 20, 2006), available at <http://www.nola.com>.)

¹⁶ (See Lease, Section VII(a), attached as exhibit to complaint.)

¹⁷ (See *id.*, Section VIII(a).)

¹⁸ (See *id.*, Section II(a).)

required by the termination procedures under the lease.¹⁹ Thus, Plaintiffs' rights to occupy their units, and Defendants' obligations to keep such units in a state of good repair, survive even today.

Defendants' new plan to demolish a majority of the public housing in New Orleans

On June 14, 2006, Defendants announced a plan to demolish four of the city's largest developments, with over 5,000 units among them: C.J. Peete, B.W. Cooper, Lafitte, and St. Bernard.²⁰ Defendants rationalized their decision stating that these developments "endured moderate to severe damage," despite earlier statements that many units in these developments suffered only minor or no water damage.²¹ Moreover, although Defendants have indicated that they will re-open certain units in C.J. Peete and B.W. Cooper (contradicting any claims that these developments should be demolished because they are obsolete) during the demolition process. Defendants have further stated that they will not re-open Lafitte or St. Bernard—a decision impacting approximately 1,800 families, despite Defendants' prior acknowledgement that some of these units suffered only minor water damage and many could be habitable again once repaired.²² In making these decisions, Defendants never consulted with the residents of Lafitte or St. Bernard at all, although the law requires it, and failed to provide displaced residents with the statutorily required notice.

¹⁹ (*See id.*, Section XIV(d).)

²⁰ (Bricker Decl. Ex. N, *HUD Outlines Aggressive Plan to Bring Families Back to New Orleans' Public Housing* (June 14, 2006), at <http://www.hud.gov/news/release/cfm?CONTENT=pr06-066.cfm>; Bricker Decl. Ex. O, Susan Saulny, *5,000 Public Housing Units in New Orleans Are to Be Razed*, THE NEW YORK TIMES (June 15, 2006), available at <http://www.nytimes.com/2006/06/15/us/15housing.html?ex=1308024000&en=7e1599e4112fed5d&ei=5088&partner=rssnyt&>.)

²¹ *Id.*

²² (*See* Bricker Decl. Ex. P, *Four N.O. housing developments will be demolished*, THE TIMES-PICAYUNE (June 15, 2006), available at <http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-5/1150356990188590.xml&coll=1>.)

Notwithstanding Defendants' long-term plans for "revitalization," Plaintiffs are entitled to return to those units that suffered no damage, or only minor to moderate damage. This is particularly true for those Plaintiffs who lived in floors above the flood line and who could return to their units even while repairs were made to units in lower floors. Plaintiffs cannot be made to stay out of New Orleans indefinitely, all the while cut-off from job opportunities in the city and the opportunity to resume and rebuild their lives in New Orleans.

Vouchers and Defendants' redevelopment plans do nothing to remedy the loss of Plaintiffs' homes

Defendants' failure to immediately repair and re-open all habitable units, including units slated for eventual demolition, is not offset by the availability of rental vouchers. New Orleans is facing an unprecedented shortage of rental housing and exaggerated rental costs. For years, HUD has recognized that "the need for additional public and affordable housing in the New Orleans community is at crisis proportions."²³ And since Hurricane Katrina, HUD has noted that New Orleans apartment rents have increased between 15 and 40 percent, with upward pressures on rent likely to continue.²⁴

Even more daunting is the scarcity of available apartments: HUD reports that, as of February 1, 2006, 100 percent of the 30,000 habitable apartments in New Orleans were occupied.²⁵ Thus, the availability of vouchers to displaced Plaintiffs—where there are few or no apartments to rent, where rent prices exceed voucher values, and where habitable public housing units stand unused—is no answer to the problem. Unless Defendants re-open the existing

²³ (Bricker Decl. Ex. E, *HANO Annual PHA Plan for Fiscal Year 2003*, at 6, available at <http://www.hud.gov/offices/pih/pha/approved/pdf/02/la001v03.pdf>.)

²⁴ (Bricker Decl. Ex. Q, *HUD Comprehensive Market Analysis Report, Economic and Housing Market Conditions of the New Orleans-Metairie-Kenner, Louisiana Metropolitan Statistical Area as of September 1, 2005, With Updates to February 1, 2006*, at 15, available at <http://www.huduser.org>.)

²⁵ *Id.*

habitable public housing, most of the residents who wish to return will never be able to afford to move back to, or remain in, New Orleans. In a “Best Practices” guide published by HUD in 2002 and submitted to the Senate and House Committees on Appropriations, HUD itself acknowledged that housing vouchers “may not be a viable option for residents given prevailing market trends and available affordable housing in their communities.”²⁶

Nor can Defendants credibly claim to be acting in Plaintiffs’ best interests by demolishing the C.J. Peete, B.W. Cooper, Lafitte and St. Bernard developments to make way for a mixture of public housing, rental housing and single family homes. HUD’s own Best Practices guide teaches away from such redevelopment plans noting that “[i]n tight housing markets, or where there is a deficit in available affordable housing relative to demand [as here], HOPE VI grantees should pursue a replacement housing strategy that relies more heavily on hard public housing units.” If the model for Defendants’ current plan is the River Garden development, as discussed below, the benefits will be felt, not by the previous residents of these developments, but by the developers, business owners, and new residents to these areas.

In 2000, St. Thomas, a development that was designed to house approximately 1,500 families, was demolished as part of a HOPE VI program to make way for mixed-income housing and retail space in an area now known as “River Garden.”²⁷ Yet, instead of providing better housing for St. Thomas residents, the River Garden development permanently displaced almost all of the original residents. While River Garden created some new apartments on the site of the former St. Thomas development, only about 40 are occupied by low-income families.²⁸ The

²⁶ (Bricker Decl. Ex. R, *HOPE VI Best Practices and Lessons Learned 1992-2002*, published by HUD (June 14, 2002).)

²⁷ (Bricker Decl. Ex. H, Bill Sasser, *Locking out New Orleans’ Poor* (June 12, 2006), http://www.salon.com/news/feature/2006/06/12/nola_housing/index_np.html.)

²⁸ *Id.*

hundreds of families forced to leave had to find substitute housing in other neighborhoods—often much further away from their jobs, their children’s schools, public transportation, churches and other family members. Before Defendants take comparable actions with respect to the C.J. Peete, B.W. Cooper, Lafitte and St. Bernard developments, as discussed in more detail below, Plaintiffs are legally entitled under 42 U.S.C. § 1437p to weigh in as to the future of their homes and their communities.

Several public officials have been overt about their desire to prevent many public housing residents from ever returning. Defendant HUD Secretary Jackson stated that “Only the best residents should return. Those who paid rent on time, those who held a job and those who worked.” While he did not explicitly say that excluding public housing residents who were not “the best” would discriminate against African Americans, Jackson, who is black, acknowledged the comment’s racially suggestive nature, telling a white reporter, “If you said this, they would say you were racist.”²⁹ Similarly, New Orleans City Council President Oliver Thomas acknowledged that he was addressing African Americans when he said that New Orleans did not need “soap opera watchers” to return to the city.³⁰ Likewise, another influential business leader and chairman of the city’s Regional Transit Authority, Mr. Reiss, said, “Those who want to see this city rebuilt want to see it done in a completely different way: demographically,

²⁹ (Bricker Decl. Ex. S, Bill Walsh, *Only ‘Best Residents’ to be Allowed Back in St. Thomas Complex*, THE TIMES-PICAYUNE (Apr. 24, 2006), available at <http://www.nola.com>.)

³⁰ (Bricker Decl. Ex. T, Eric Berger, *New Orleans Says it Won’t Give Free Ride*, HOUSTON CHRONICLE (Feb. 22, 2006), available at <http://www.chron.com/disp/story.mpl/front/3676263.html>.)

geographically and politically. I'm not speaking for myself here. The way we've been living is not going to happen again, or we're out."³¹

Defendants have recently announced their intention to open approximately 1,000 more units by the end of September 2006.³² This date is merely a moving target, however, as Defendants previously promised that these units would be open by August, and have to date given no assurances as to which units will be open, or where.³³ Even assuming Defendants are true to their word, the majority of public housing units will remain closed—preventing thousands of families from returning to their homes and to New Orleans.

IV. ARGUMENT

The standard for preliminary injunctive relief is well established. To obtain such relief, Plaintiffs must establish (1) a substantial likelihood that they will prevail on the merits; (2) a substantial threat of injury should injunctive relief not be awarded; (3) that the threatened harm to the moving party outweighs the threatened harm an injunction may do to the non-moving party; and (4) that the injunctive relief would not disserve the public interest. *See Canal Auth. of Fl. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974); *Shamloo v. Miss. State Bd. of Trustees of Insts. of Higher Learning*, 620 F.2d 516, 524-25 (5th Cir. 1980) (reversing district court's denial of preliminary injunction in class action suit); *see also Dai v. Caplinger*, Nos. 94-2190, 94-2194, 94-2198, 94-2191, 94-2195, 94-2199, 94-2193, 94-2197, 94-2201, 1995 WL 241861, at *2 (E.D. La. Apr. 25, 1995). “The primary justification for applying (injunctive relief) is to preserve the

³¹ (Bricker Decl. Ex. U, Christopher Cooper, *Old Line Families Escape Worst of Flood and Plot the Future*, THE WALL STREET JOURNAL (Sept. 8, 2005), available at <http://www.online.wsj.com>.)

³² (Bricker Decl. Ex. M, Ed Anderson, *HANO letting 113 staffers go*, THE TIMES-PICAYUNE (July 20, 2006), available at <http://www.nola.com>.)

³³ (Bricker Decl. Ex. N, *HUD Outlines Aggressive Plan to Bring Families Back to New Orleans' Public Housing* (June 14, 2006), at <http://www.hud.gov/news/release/cfm?CONTENT=pr06-066.cfm>.)

court's ability to render a meaningful decision on the merits. Although the fundamental fairness of preventing irreparable harm to a party is an important factor on a preliminary injunction application, the most compelling reason in favor of (granting a preliminary injunction) is the need to prevent the judicial process from being rendered futile by defendant's action or refusal to act. Thus only those injuries that cannot be redressed by the application of a judicial remedy after a hearing on the merits can properly justify a preliminary injunction." *Canal Auth. of Fl.*, 489 F.2d at 573 (internal citation omitted).

Courts use a "balancing-type approach in reviewing a preliminary injunction or temporary restraining order application." *Dai*, 1995 WL 241861, at *2. For example, "[w]here the other factors are strong, a showing of some likelihood of success on the merits will justify temporary injunctive relief. See *Productos Carnic, S.A. v. Cent. Am. Beef & Seafood Trading Co.*, 621 F.2d 683, 686 (5th Cir. 1980). Here, however, *all* four factors weigh heavily in favor of granting Plaintiffs' requested relief.

A. There Is A Substantial Likelihood That Plaintiffs Will Prevail On The Merits Of Their Claims.

Plaintiffs can show a likelihood of success sufficient to warrant injunctive relief with respect to each of their claims alleging violations of the U.S. Housing Act of 1937, violations of their rights under the terms of their leases and Louisiana landlord-tenant law, due process violations under the U.S. Constitution and violations of the Fair Housing Act. Any one of these claims would support injunctive relief.

1. Defendants have violated the U.S. Housing Act.

Defendants' plans to demolish the C.J. Peete, B.W. Cooper, Lafitte and St. Bernard housing developments are in direct violation of the statutory and regulatory procedures outlined in the U.S. Housing Act of 1937, 42 U.S.C. § 1437p, and 24 C.F.R. § 970 *et seq.*, which govern

the application for, and approval of, public housing demolitions. In addition, Defendants' gross neglect and mismanagement of all public housing units that stand in disrepair and have not yet been reopened constitutes constructive or *de facto* demolition in further violation of 42 U.S.C. § 1437p and 24 C.F.R. § 970.12. See *Velez v. Cisneros*, 850 F. Supp. 1257, 1273-74 (E.D. Pa. 1994); *Tinsley v. Kemp*, 750 F. Supp. 1001, 1007-08 (W.D. Mo. 1990); *Concerned Tenants Ass'n of Father Panik Village v. Pierce*, 685 F. Supp. 316, 321 (D. Conn. 1988). At a bare minimum, Plaintiffs should be allowed to return to their units until Defendants comply with their statutory obligation for demolition.

a. Defendants HUD and HANO are subject to statutory requirements governing the demolition of public housing.

Section 18 of the U.S. Housing Act of 1937 prohibits HUD from approving an application proposing demolition of a public housing development if the HUD Secretary determines that the application was not developed in consultation with the residents who will be affected by the demolition and with each affected resident advisory board and/or resident council. 42 U.S.C. § 1437p(b)(2). The statute further provides that HUD may not approve an application for demolition unless the public housing agency ("PHA"), here HANO, among other things, certifies: (a) that the public housing project is "obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes" and that "no reasonable program of modifications is cost-effective to return the public housing project or portion of the project to useful life; (b) that 90 days prior to the displacement of the affected residents, each family will be notified that the project will be demolished and that each displaced family will be offered "comparable housing" that meets "housing quality standards" and "that is located in an area that is generally not less desirable than the location of the displaced person's housing"; and

(c) that the PHA will not commence demolition until all residents are relocated. *Id.* at § 1437p(a)(1)(A), (a)(4).

b. Defendants have violated their statutory obligations by disregarding the proper application and approval procedures governing demolitions.

Here, Defendants have not abided by their statutory obligations. Plaintiffs who resided in the C.J. Peete, B.W. Cooper, Lafitte and St. Bernard housing developments prior to Katrina have never been consulted as to the plans to demolish these units, in violation of 42 U.S.C.

§ 1437p(b). In addition, Plaintiffs were not given notice of the demolition consistent with the statutory requirements that obliges the public housing agency to provide each resident with 90 days notice prior to displacement that the development will be demolished and that comparable housing will be provided. *See* 42 U.S.C. § 1437p(a)(4)(A). Moreover, Defendants' own assessment of the C.J. Peete, Lafitte, B.W. Cooper and St. Bernard housing developments belies any suggestion that these developments are obsolete, or could not have been returned to useful life in a cost-effective manner.³⁴ Indeed, the fact that Defendants still plan to reopen units in the C.J. Peete and B.W. Cooper projects demonstrates that such developments remain suitable for housing purposes. These combined facts show that, not only has HANO failed to comply with the statutory requirements of 42 U.S.C. § 1437p(a) and (b) applicable to demolition applications, but that HUD, in approving the demolition of such developments, also is in violation of the statute.

The fact that Hurricane Katrina *temporarily* displaced Plaintiffs does not provide Defendants with an excuse to ignore their duties under the statute. Plaintiffs who formerly resided in the developments slated for demolition not only were entitled to 90 days notice before being *permanently* displaced, but also were entitled to have a say in the demolition plans *before*

³⁴ (Bricker Decl. Ex. B, HANO FAQ at 3.)

they were approved and commenced. Meanwhile, separate and apart from the notice and consultation issues, Defendants also were required to relocate all residents from these buildings into “comparable housing” “that meets quality standards” and “is located in an area that is generally not less desirable than the location of the displaced person’s housing” *prior* to commencing demolition activities. 42 U.S.C. § 1437p(a)(4)(E). While Plaintiffs from the developments slated for demolition have been provided vouchers to use on rent at other residences, due to the shortage of housing in New Orleans and the increasing cost of rent, few have been able to find affordable, comparable housing in the City of New Orleans. In fact, most are living in Texas, Georgia, elsewhere in Louisiana, or other states. Many have trouble finding work, paying bills due to increased costs they did not previously assume through their public housing arrangements, face discrimination in their new communities and schools, and are unable to get around due to lack of public transportation. In such circumstances, Defendants cannot claim that Plaintiffs have been offered “comparable housing” “that is located in an area that is generally not less desirable than the location of the displaced person’s housing.” *See* 42 U.S.C. § 1437p(a)(4)(A). This is particularly true for those Plaintiffs whose employers have indicated that their jobs will remain open for only a short while longer, and who will miss the opportunity to return to work if they are not permitted to return to their residences in New Orleans.

c. Defendants are liable for statutory and regulatory noncompliance in connection with their *de facto* demolition activities.

Not only have Defendants violated the statutory requirements governing the development, submission and approval of demolition applications, but Defendants also have acted in violation of these same requirements by failing to return Plaintiffs’ units to habitable conditions and engaging in *de facto* demolition activities, even though many of these units have suffered only minor damage due to the hurricane and could (and should) be quickly reopened to

the former tenants. *See Velez*, 850 F. Supp. at 1273-74; *Tinsley*, 750 F. Supp. at 1007-08; *Concerned Tenants*, 685 F. Supp. at 321.³⁵

Despite Plaintiffs' expressed desire to return home to their units and willingness to assist with the repair and cleaning of their units, Defendants have prohibited Plaintiffs from moving back into their homes and, in many cases, have taken aggressive steps to prevent them from doing so. For example, Defendants have erected fences with razor wiring around the St. Bernard and Florida developments, and have put metal shutters over the windows and doors at Lafitte.³⁶ While there is a governmental interest in preventing theft or vandalism, that cannot justify depriving the rightful residents of access to their homes, especially when the barriers have been erected as a prelude to complete demolition. Defendants further have refused and/or failed to repair Plaintiffs' units, despite the fact that many of these units appear to have experienced only minor damage. Instead, Defendants have intentionally neglected these apartments by failing to clean and repair the units, replace broken fixtures and windows, and return power to the buildings, and have instead shuttered many of the units so that conditions such as mold, mildew and stench will worsen.

³⁵ With respect to developments that HUD has not already approved for demolition, Defendants also are in violation of the governing regulations that prohibit the commencement of any demolition activity until an application for such demolition has been approved. *See* 24 C.F.R. § 970.12 (stating that “[a] PHA [such as HANO] may not take any action to demolish or dispose of a public housing project or a portion of a public housing project without obtaining HUD approval under this part”).

³⁶ (*See* Bricker Decl. Ex. K, Anne Rochell Koningsmark, *New Orleans Public Housing Plan Set*, USA TODAY (June 14, 2006), http://www.usatoday.com/news/nation/2006-06-14-new-orleans-housing_x.htm; Bricker Decl. Ex. V, Gwen Filosa, *Public Housing Residents Demand to Reoccupy Units*, THE TIMES-PICAYUNE (May 4, 2006), *available at* <http://www.nola.com>.)

As more than one court has found:

By enacting § 1437p, Congress intended to prohibit the destruction of public housing projects without HUD approval. Because the result--the unapproved destruction of a housing project--is the same whether done by a wrecking ball and bulldozers or by neglect that renders the units uninhabitable, the requirements of § 1437p should apply to both actual and *de facto* demolitions. To conclude otherwise would allow public housing agencies to evade the law by simply allowing housing projects to fall into decay and disrepair.

Concerned Tenants, 685 F. Supp. at 321, citing *Edwards v. District of Columbia*, 821 F.2d 651, 669-70 (Will, J. dissenting); *see also Tinsley*, 750 F. Supp. at 1007, quoting *Concerned Tenants*, 685 F. Supp. at 321. Another court similarly remarked, “[i]t is arbitrary to distinguish housing that is ‘demolished’ because the entire physical structure is destroyed from housing that is ‘demolished’ because extensive interior reconstruction leaves only the exterior walls standing. In both cases, the inventory of public housing is diminished for a substantial period of time.” *Velez*, 850 F. Supp. at 1271.

In other words, by allowing the physical conditions of Plaintiffs’ units to continue to deteriorate, Defendants have violated the statutory and regulatory obligations attendant to demolition activities by making these units functionally unavailable for a substantial period of time. *See Velez*, 850 F. Supp. at 1273. Thus, for the same reasons discussed *supra* as to Defendants’ violations of 42 U.S.C. § 1437p and 24 C.F.R. § 970.12 with regard to their demolition activities, including failing to first consult with residents or provide notice of demolition and the need to relocate *before* commencing demolition activities, Defendants have violated these same requirements in their neglect and mismanagement of the remaining closed units.

2. Plaintiffs have a likelihood of prevailing on their lease and landlord-tenant claims.

Defendants' actions violated the terms of Plaintiffs' leases and Louisiana law governing leases. Plaintiffs had valid leases at the time of Hurricane Katrina. The leases have not been terminated by any subsequent events, as HANO has implicitly acknowledged in its public statements. As a result, Defendants remain bound by their obligations under the leases.

a. HANO must provide Plaintiffs access to their units and must make prompt repairs.

Under Louisiana law, the "principal obligations" of a lessor are:

- (1) To deliver the thing to the lessee;
- (2) To maintain the thing in a condition suitable for the purpose of which it was leased; and
- (3) To protect the lessee's peaceful possession for the duration of the lease.

La. Civ. Code Ann. art. 2682. Plaintiffs' leases further grant them "the right to exclusive use and occupancy of the dwelling unit,"³⁷ and the first obligation of Defendants under the terms of the leases is "To maintain the dwelling unit and the project in a condition that is decent, safe, sanitary, and in good repair."³⁸ Defendants have prevented Plaintiffs from returning to their homes by erecting fences, locking doors, and boarding up entire housing developments. Defendants also have both failed to repair units damaged by Hurricane Katrina and affirmatively damaged some units further by removing electrical wiring and utility connections, in direct contravention of the terms of the lease.³⁹ By obstructing Plaintiffs' efforts to move back into their homes, Defendants are violating both the terms of the lease and the Louisiana Civil Code.

³⁷ (*See* Lease, Section VII(a).)

³⁸ (*See id.*, Section VIII(a).)

³⁹ (*See id.*, Section VIII(c) and (e).)

b. Plaintiffs' leases remain in effect.

The leases remain binding today. Louisiana law provides for the automatic termination of leases under certain circumstances, but the damage to many, if not most, of the public housing units was not sufficient to terminate the leases by act of law. Plaintiffs have done nothing to terminate their leases. While Defendants can terminate the leases, they have failed to follow the procedures required to do so. And HANO's own statements indicate that it acknowledges that the leases remain in force.

Louisiana law provides for the automatic termination of a lease "[i]f the leased thing is lost or totally destroyed." La. Civ. Code Ann. art. 2714. While Defendants may argue that some of the public housing developments were "totally destroyed," the Louisiana courts have interpreted that phrase literally. When a building is damaged, such that only some parts are totally destroyed and others are merely damaged, article 2714 does not apply. *Treigle Sash Factory v. Saladino*, 211 La. 945, 954-55 (1947) (applying "totally destroyed" language in a predecessor statute). Furthermore, HANO's public description of the damage described only the St. Bernard, Florida, and Desire developments as suffering "severe damage." In light of the high legal standard and HANO's admission, Plaintiffs' leases have not terminated as a matter of law.

Tenants have a right to terminate leases for property that has suffered damage but not been "totally destroyed," La. Civ. Code Ann. art. 2715, but that is a right of the tenants alone. The lessor has no right to terminate a lease because of partial destruction. In this case, Plaintiffs have done nothing to terminate the lease. Rather, they have sought since their initial displacement to return to their homes under the terms of the lease. They remain ready to pay rent and otherwise comply with their obligations under the lease. By their terms, the leases

continue to renew automatically for 12-month terms, and thus the mere passage of time does not suffice to terminate the lease.⁴⁰

The lease terms permit Defendants to terminate the lease under certain circumstances, but those circumstances have not been met. Defendants may only terminate the lease for “serious or repeated violations of the material terms of the Lease.”⁴¹ Further, Defendants must provide residents with prior notice and the opportunity for either a grievance hearing prior to terminating the lease or a judicial eviction procedure.⁴² Defendants have not complied with these requirements. Similarly, while Defendants may transfer a resident to alternative accommodations if the unit is damaged and not reparable, Defendants have not offered reasonable replacement accommodations to all displaced residents and this term of the lease cannot be interpreted as allowing Defendants to make an unreasonable judgment that the necessary repairs fall within an exception for those that “cannot be made within a reasonable time.”⁴³

HANO’s statements also acknowledge that the leases remain in place. HANO has stated that it “is not taking applications for its housing programs at this time. HANO is concentrating on getting families with leases an opportunity to return to their units.”⁴⁴

Because the leases have not been terminated by act of law, actions of Plaintiffs, or actions of Defendants, as demonstrated by HANO’s own admission, the leases remain in full effect.

⁴⁰ (*See* Lease, Section II(a).)

⁴¹ (*See id.*, Section XIV(a).)

⁴² (*See id.*, Section XIV(d).)

⁴³ (*See id.*, Section X(b).)

⁴⁴ (Bricker Decl. Ex. B, HANO FAQ at 3.)

3. Plaintiffs have a likelihood of prevailing on their due process claims.

The actions of Defendants have deprived Plaintiffs of property without due process of law, in violation of the Fifth and Fourteenth Amendments. In order to prevail on a procedural due process claim, plaintiffs must prove that they have “asserted a recognized liberty or property interest” and were “intentionally or recklessly deprived of that interest, even temporarily, under color of state law” without due process. *See Woodard v. Andrus*, 419 F.3d 348, 353 (5th Cir. 2005). Plaintiffs are likely to prevail upon each of these elements. Courts consistently recognize that tenants, including public housing residents, have a property interest in their leaseholds. The actions of Defendants are manifestly state action, such that no further discussion of this requirement is necessary. Finally, while the exigent circumstances created by an emergency can justify a deprivation of property without prior notice, no justification exists for continuing the deprivation without post-deprivation notice and the opportunity for a hearing.

a. Plaintiffs have been deprived of property.

The Supreme Court has held that public housing tenants have “a significant interest in property” in their “right to continued residence in their homes.” *Greene v. Lindsey*, 456 U.S. 444, 451 (1982). The New Orleans public housing residents retained that property interest despite needing to flee Hurricane Katrina. As explained in Part IV.A.2.b, *supra*, the damage caused by Hurricane Katrina was insufficient to terminate Plaintiffs’ property interests in their apartments as a matter of state law. And mere lack of possession does not terminate a tenant’s property interest in their leasehold. *See Flatford v. City of Monroe*, 17 F.3d 162 (6th Cir. 1994).

Defendants have deprived Plaintiffs of their property interest in their homes. The efforts to prevent re-entry, including erecting fences topped with razor-wire and boarding up and shuttering buildings, have the undeniable effect of rendering it physically impossible for Plaintiffs to return to their homes. Moreover, HANO’s public statements demonstrate that it

considers C.J. Peete, Lafitte, B.W. Cooper, St. Bernard, Desire and Florida closed, along with much of Iberville.⁴⁵ No serious question exists that Plaintiffs have been deprived of their property interests.

b. Plaintiffs have not received due process of law.

While the constitutionally-required process varies depending on circumstances, at a minimum public housing residents who have been denied access to their homes must receive notice and the opportunity to have a prompt, post-deprivation hearing. Courts apply a balancing of several factors to determine the amount of process required for a given deprivation. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Courts consider three factors: “the private interest that will be affected by the official action”; “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 “the Government’s interest, including the function involved and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* While the government’s interest in protecting people from hazardous conditions in their homes is significant, all of the other considerations support providing Plaintiffs with a prompt and full opportunity to challenge the deprivation of their property interest.

In particular, the risk of government error is very high. The only evidence that it would be dangerous for Plaintiffs to return to their homes is the government’s statement. In contrast, Plaintiffs’ observations and prior statements by Defendants that at least some of the public housing units were not severely damaged suggest that many, if not most, of the units are not dangerous.⁴⁶ A hearing, where Plaintiffs would be able to present evidence that their apartments could be safely occupied with minimal repairs and Defendants would have an obligation to

⁴⁵ (Bricker Decl. Ex. B, HANO FAQ at 3-4.)

⁴⁶ *Id.* at 3.

present actual evidence of dangerous conditions, would resolve these doubts. Notice and the opportunity for a hearing would replace an opaque and dubious decision with an open decision, based on a full factual record, and subject to judicial review. Indeed, a right to a hearing is the most standard procedural protection. *Mathews*, 424 U.S. at 333 (Supreme Court “consistently has held that some form of hearing is required before an individual is finally deprived of a property interest.”).

As for the importance of the property interest at stake, Plaintiffs have been deprived not just of some property, but of their homes. At a time when Hurricane Katrina has destroyed much of what they owned and forced them through a harrowing flight, Defendants have taken away their last and most valued property. And even a temporary further deprivation can amount to a permanent deprivation: as courts have recognized, “for all practical purposes, the tenants lose their ability to meaningfully contest the condemnation order when they make alternate housing commitments.” *Grayden v. Rhodes*, 345 F.3d 1225, 1242-43 (11th Cir. 2003).

Recognizing the importance of protecting public housing residents’ property interests, courts generally require notice and a right to a hearing before the government may take away residents’ homes. *Richmond Tenants Org. v. Kemp*, 956 F.2d 1300, 1306-07 (4th Cir. 1992). The courts have applied those rules even when housing authorities seek to evict residents for repeated involvement in drug trafficking. *Id.* at 1308.

Even where the initial deprivation is undertaken without notice due to exigent circumstances, however, the government must provide post-deprivation notice and the opportunity for a prompt hearing. *Flatford* addressed the procedural due process requirements when tenants were evacuated from their homes because of unsafe conditions. The court held that, while a tenant could be dispossessed without notice because of an imminent danger,

“fundamental fairness requires notice in short order of the right to an administrative hearing, including the manner designated for obtaining timely review.” *Flatford*, 17 F.3d at 169.

In this case, Plaintiffs have received no notice whatsoever and been afforded no opportunity for a hearing. Some Plaintiffs have received no communications from Defendants about their apartments at all. Even those whom Defendants have contacted have only been informed of the disposition of their personalty, not even that Defendants had decided to exclude them from their homes permanently. Likewise, Defendants have made no effort to post information about their plans in the areas where residents of the public housing units have relocated. To the extent that Defendants provided any notice at all, they utterly failed to apprise Plaintiffs of their right to a prompt administrative hearing, because they provided no opportunity for hearings.

Because Defendants have deprived Plaintiffs of their property and failed to provide Plaintiffs with even post-deprivation notice and opportunity for a hearing, Plaintiffs have shown a substantial likelihood of success on the merits of their due process claim.

4. Plaintiffs have a strong likelihood of prevailing on their racial discrimination disparate impact claim.

Defendants’ plans to demolish the C.J. Peete, B.W. Cooper, Lafitte and St. Bernard housing developments and refusal to allow residents to return to all habitable units even in the short-term are in violation of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968), 42 U.S.C. § 3604(a), which makes it unlawful to “make unavailable or deny” housing “because of race.” 42 U.S.C. § 3604(a). A decision’s discriminatory effect suffices to prove a denial of housing based on race, when the decision has a substantially adverse effect on a protected minority group. *See Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 934-36

(2d Cir. 1988); *Metropolitan Housing Corp. v. Arlington Heights (Arlington Heights II)*, 558 F.2d 1283, 1290 (7th Cir. 1977).

To prevail on a claim arising under the Fair Housing Act, Plaintiffs must first show a prima facie case of disparate impact. See *Keith v. Volpe*, 858 F.2d 467, 482 (9th Cir. 1988) (“*Volpe II*”). The burden then shifts to Defendants to proffer a justification for their actions. *Id.* Assuming such a justification is offered, the Court then balances the following factors: (1) whether the discriminatory effect is significant, (2) whether partial evidence of discriminatory intent exists, (3) whether less discriminatory alternatives exist, and (4) whether the relief sought is burdensome. See *Huntington*, 844 F.2d at 933.

Here, Defendants have decided to demolish 5,000 units of public housing—a decision that will have an adverse effect upon low-income African Americans—at a time when these New Orleanians have never been in greater need of housing. This impact makes out a prima facie case that requires Defendants to come forward with a legitimate justification showing that no less discriminatory means are available. Even assuming that Defendants present a non-discriminatory justification, when balanced, the four factors considered in determining whether a disparate impact without proven discriminatory intent violates the Fair Housing Act all support Plaintiffs, thus showing a likelihood of success.

a. Plaintiffs have presented a compelling prima facie case of discriminatory effect under the Fair Housing Act.

The Fair Housing Act (“FHA”) may be applied to Defendants’ decision to demolish C.J. Peete, B.W. Cooper, Lafitte and St. Bernard and to prevent public housing residents from moving back into their homes, because those decisions have a substantial effect on the “availability of housing” and impacts much more heavily on African-American communities. See *Jackson v. Okaloosa County*, 21 F.3d 1531, 1542 n.17 (11th Cir. 1994) (discussing the broad

applicability of “otherwise make available or deny”); *Southend Neighborhood Improvement Assn. v. County of St. Clair*, 743 F.2d 1207, 1209-10 (7th Cir. 1984) (same).⁴⁷ Discriminatory intent is not necessary to violate the FHA: “[e]ffect, not motivation, is the touchstone [under the FHA], in part because clever men may conceal their motivations, but more importantly, because . . . we now firmly recognize that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willful scheme.” *United States v. City of Black Jack*, 508 F.2d 1179, 1185 (8th Cir. 1974). Plaintiffs need only show that the demolition of the housing developments and refusal to allow reoccupancy will have a significant discriminatory effect on a protected minority group. See *Huntington*, 844 F.2d at 934-36; *United States v. Mitchell*, 580 F.2d 789, 791 (5th Cir. 1978) (*superseded by statute on other grounds*); *Rizzo II*, 564 F.2d at 146-48; *Arlington Heights II*, 558 F.2d at 1290-91.

Plaintiffs may show that the decision had a discriminatory effect by establishing either: (1) the immediate effect of the housing decision has “a greater adverse impact on one racial group than on another,” or (2) the ultimate effect of the housing decision may be racially discriminatory because it tends to exclude minorities. *Arlington Heights II*, 558 F.2d at 1290. While one need only establish one of these theories to prevail under § 3604(a), Plaintiffs in this case will establish that both the immediate effect and the ultimate effect of the decision to demolish the housing developments have a substantial discriminatory impact.

⁴⁷ See also *Volpe II*, 858 F.2d 467 (city’s refusal to approve replacement of low-income housing violated the FHA); *Huntington*, 844 F.2d 926 (city’s refusal to amend an ordinance violated the FHA); *Smith v. Town of Clarkton*, 682 F.2d 1055 (4th Cir. 1982) (city’s decision to withdraw from a multi-municipality housing authority violated the FHA); *Residents Advisory Bd. v. Rizzo*, 564 F.2d 126 (3d Cir. 1977) (“*Rizzo I*”) (city’s failure to follow through with the construction of a low-income housing project violated the FHA); *Arlington Heights II*, 558 F.2d 1283 (7th Cir. 1977) (city’s refusal to rezone violated the FHA).

i. Plaintiffs can show a substantial immediate disparate impact.

Defendants' actions have a discriminatory effect because the adverse impact falls more heavily on minorities than on non-minorities. *Arlington Heights II*, 558 F.2d at 1290-91. When the group affected by an adverse housing decision consists largely of minorities, the decision necessarily has an adverse impact. In *Rizzo*, 95% of the group affected by the city's failure to construct low-income housing were African American, and the court held that city had violated the FHA. *Residents Advisory Bd. v. Rizzo*, 425 F. Supp. 987, 1018 (E.D. Pa. 1976) ("*Rizzo I*"). *Rizzo I* has long been held out as a benchmark of a substantial showing of disparate impact. *Arlington Heights II*, 558 F.2d at 1290. Plaintiffs' showing in this case, however, is even more compelling: Defendants have decided to destroy 5,000 units of public housing stock at a time when available housing, particularly affordable housing, is virtually non-existent in New Orleans, and 100% of families affected by this decision are African American. Likewise, all of the public housing residents currently prevented from moving back into their homes are African American. As the court stated in *Arlington Heights II*, "the argument for racial discrimination [in that case, 40%] is therefore not as strong as it would be if all or most of the group adversely affected was nonwhite." *Arlington Heights II*, 558 F.2d at 1291. The decision to demolish 5,000 units of public housing and deny reoccupancy prior to demolition will thus have a disproportionate effect on African Americans, because they are the racial group with the "highest percentage" of affected members. *See Clarkton*, 682 F.2d at 1065.

In fact, even if the affected population is compared against other populations, such as all recipients of governmental housing assistance, all poor residents of New Orleans, or even all residents of New Orleans, African Americans are severely and disproportionately affected by the Defendants' decision to demolish the housing developments. According to a recent report, all

public housing residents of New Orleans are African-American.⁴⁸ Approximately 35% of African Americans in New Orleans have incomes below the poverty line, while only around 11.0% of whites live in poverty.⁴⁹ Moreover, of those New Orleans' families who are at or below the federal poverty level, over 91% are African American.⁵⁰ Thus, African Americans constitute a far greater percentage of those presumptively eligible for housing assistance, but the group targeted by the decision to destroy the public housing developments is even more heavily African American than the entire pool of people eligible for governmental housing assistance. There can be no doubt that the Defendants' decision will have a much "greater impact on black people than on white people." *Arlington Heights II*, 558 F.2d at 1288.⁵¹

In this case, the tremendous shortage of available housing in New Orleans only magnifies the discriminatory effect of the Defendants' plan. Hurricane Katrina destroyed much of New Orleans' housing stock, with essentially all of the habitable apartments in the private market currently occupied. The rental rates also skyrocketed. Thus, essentially no private housing which is both affordable and accessible exists in New Orleans. Furthermore, New Orleans has a

⁴⁸ (Bricker Decl. Ex. C, *HANO Residents Characteristics Report 2005-06*, available at <http://pic.hud.gov/pic/RCRPublic/rcrha.asp>.)

⁴⁹ (Bricker Decl. Ex. W, *Katrina: Demographics of a Disaster*, THE URBAN INSTITUTE (Sept. 9, 2005), available at http://www.urban.org/UploadedPDF/900835_katrina_factsheet.pdf.)

⁵⁰ *Id.*

⁵¹ Not only does the impact of Defendants' actions fall entirely on African Americans, the sheer number of residents affected is staggering. *Arlington Heights II* involved a plan to construct 190 units. *Arlington Heights II*, 558 F.2d at 1286. *Volpe II* involved the proposed construction of 96 units. *Volpe II*, 858 F.2d at 472. *Clarkton* involved a failure to build 50 units. *Clarkton*, 682 F.2d at 1058. Similarly, *Owens v. Charleston Housing Authority* dealt with a public housing authority's decision to demolish a 50-unit apartment building. *Owens v. Charleston Housing Authority*, 336 F. Supp. 2d 934 (E.D. Mo. 2004). In all of these cases, the courts found a significant adverse impact on African Americans and found a FHA violation, even though neither the total number of residents affected nor the percentage of residents that were minorities approached the number in this case.

long and sordid history of discrimination against African Americans in the rental market.⁵² In fact, post-Hurricane Katrina, there has been rampant housing discrimination, reducing housing opportunities for displaced African-American New Orleanians.⁵³

ii. Plaintiffs can show that the ultimate effect is exclusionary.

Defendants' actions also have a discriminatory effect because their ultimate effect is to exclude African Americans from the city of New Orleans. *Cf. Arlington Heights II*, 558 F.2d at 1290. In *Rizzo I*, the court found a FHA violation when an urban renewal plan effectively removed a substantial number of African Americans from the community. *Rizzo II*, 564 F.2d at 149; *see also Keith v. Volpe*, 618 F. Supp. 1236, 1151 (C.D. Cal. 1985) (*Volpe I*). In *Volpe I*, the court considered a challenge to a city's failure to provide replacement housing to low-income residents displaced by freeway construction. *Volpe I*, 618 F. Supp at 474. The district court, in a decision subsequently affirmed by the Ninth Circuit, found that the inaction's "ultimate effect" created a disparate impact that violated the FHA:

The ultimate effect of frustrating the [developments] is to prevent low income minority displacees from continuing to reside in [the city]. If affordable housing is not made available in [the city] by the time they are displaced, they will have to move out of [the city] altogether. This is not simply a case of the city preventing non-resident minorities from moving into the city: if replenishment housing is not built in time, [the city] will succeed in depopulating itself of a large number of its current minority residents.

Volpe I, 618 F. Supp. at 1151, *aff'd Volpe II*, 858 F.2d 467. Likewise, the Sixth Circuit held that a city violated the FHA when it failed to provide replacement housing for displacees of an urban

⁵² (See Bricker Decl. Ex. X, *Analysis of Impediments to Fair Housing*, prepared by the Fair Housing Action Center for the City of New Orleans (1999).)

⁵³ After Katrina, it took the filing of a federal fair housing complaint on November 16, 2005, by the Greater New Orleans Fair Housing Action Center to force HANO to reoccupy apartments in River Garden with former African-American residents. (See Bricker Decl. Ex. Y, *Greater New Orleans Fair Housing Action Center News Release* (November 16, 2005), available at <http://gnofairhousing.org/pdfs/11-16-05PressHANO.pdf>.)

renewal program that had converted their housing units to industrial use. *Garrett v. Hamtramck*, 503 F.2d 1236, 1239-40 (6th Cir. 1974). The city's failure to provide replacement housing when it was aware that the local market could not absorb the displacees had a racially discriminatory ultimate effect. *Id.* at 1242.

In the instant case, Defendants' demolition plans have the effect of precluding thousands of African Americans from returning to their home city—a decision that Defendant Jackson acknowledges means “New Orleans is not going to be as black as it was for a long time, if ever again. . . . I'm telling you, as HUD secretary and having been a developer and a planner, that's how it's going to be.”⁵⁴ The overwhelmingly African-American residents displaced from the public housing developments and scattered across the United States must make decisions about their lives. But the rental market in New Orleans is such that returning is essentially impossible if Defendants demolish Plaintiffs' homes. The longer Plaintiffs are kept away from the city, the harder it will be to return, as they will need to find permanent new jobs. Thus, the ultimate effect of Defendants' plan is to exclude a large African-American population from the city of New Orleans.

A recent study by Brown University Professor John Logan similarly found that Hurricane Katrina's “impact was disproportionately borne by the region's African American community,” and supports the proposition that Defendants' actions threaten the future of African-American public housing residents in New Orleans, at a time when the city's entire African-American population is at risk.⁵⁵ Professor Logan predicts that New Orleans may lose as much as 80% of

⁵⁴ (Bricker Decl. Ex. Z, Lori Rodriguez and Zeke Minaya, *New Orleans Racial Makeup Up in Air*, HOUSTON CHRONICLE (Sept. 29, 2005), available at <http://www.chron.com/disp/story.mpl/front/3374480.html>.)

⁵⁵ (Bricker Decl. Ex. AA, John R. Logan, *The Impact of Katrina: Race and Class in Storm-Damaged Neighborhoods*, at 14, available at <http://www.s4.brown.edu/katrina/report.pdf>.)

its black population, noting that “[p]eople who previously lived in public housing seem to have the least chances to return, given current policy.”⁵⁶ Rather than exacerbating the city’s African-American population loss, Defendants could prevent further exclusion by preserving public housing and allowing residents to return.

b. Plaintiffs will likely prevail under the burden-shifting analysis applicable to final adjudication on the merits.

A showing of discriminatory effect establishes a prima facie case. Under the burden-shifting approach applied in these cases, Defendants then have the burden to present justifications that are “bona fide and “legitimate” and that show that “no less discriminatory means are available.” If Defendants come forward with adequate justifications, courts resolve the ultimate question of whether the actions violated the FHA by applying a four-factor analysis. *See Huntington*, 844 F.2d at 935; *Clarkton*, 682 F.2d at 1065; *Arlington Heights II*, 558 F.2d at 1290-93. The factors considered are: (1) the strength of the discriminatory effect, (2) partial evidence of discriminatory intent, (3) a legitimate and bona fide justification for the effect that allows for no less discriminatory alternatives, (4) whether the defendant seeks to compel construction. *See Huntington*, 844 F.2d at 933. Because of the importance of the overall goal of promoting fair housing, courts resolve close cases, where only some factors weigh in favor of relief, in favor of the plaintiffs. *See Arlington Heights II*, 558 F.2d at 1293. Thus, even though Plaintiffs believe we have a high likelihood of success on each of these factors, relief would be justified even if the Court disagreed on one or two.

The first factor, the strength of the discriminatory effect, is largely a recapitulation of the prima facie case. The only point that needs to be made about it is that it does not merely show some minor disparate impact; rather, Defendants actions are on a huge scale, permanently

⁵⁶ *Id.*

displacing thousands of people, and affect entirely the African American community. This factor thus weighs heavily in the Plaintiffs' favor.

i. Plaintiffs can show evidence of discriminatory intent.

Plaintiffs' prima facie case of discriminatory effect is only strengthened when, as is the case here, there also is evidence of discriminatory intent. *Arlington Heights II*, 558 F.2d at 1292. While the evidence of intent required in a disparate impact case may be less than that required in a discriminatory intent case, it is sufficient to raise an inference of intent. This factor, while the least important of the four prongs of a disparate impact case, recognizes that even partial evidence of discriminatory intent can be the result of deliberate discrimination by officials who are too sophisticated to admit their full intentions. *Id.* Thus, when viewing Defendants' decision against a backdrop of historic racial animus toward African Americans in New Orleans and a contemporary ambivalence toward African American residents of public housing in particular, the unlawfulness of Defendants' actions based on their disparate effect becomes clear.

Discriminatory statements can come from the actual decision makers themselves, or from private individuals or the public whose statements influence the decisions made. *See Clarkton*, 682 F.2d at 1066. Officials and developers have made racially explicit statements about the likelihood that black residents will not return to New Orleans. Defendant HUD Secretary Jackson, who has the ultimate authority and control over decisions regarding New Orleans public housing, predicted that "New Orleans is not going to be as black as it was for a long time, if ever again. . . I'm telling you, as HUD secretary and having been a developer and a planner, that's how it's going to be."⁵⁷ These statements made by the ultimate decision maker may not be unfounded predictions, but instead a disclosure of Defendants' plans.

⁵⁷ *Id.*

Further, Defendant Jackson and others also have explicitly said that they want to prevent some of the public housing residents from returning. Defendant Jackson stated that “Only the best residents should return. Those who paid rent on time, those who held a job and those who worked.” Although this comment is not explicitly racial, Jackson, who is black, acknowledged its racially suggestive nature, telling a white reporter, “If you said this, they would say you were racist.”⁵⁸ Similarly, New Orleans City Council President Oliver Thomas acknowledged that he was addressing African-Americans when he said that New Orleans did not need “soap opera watchers” to return to the city. Thomas, who is also black, said “I’m saying these things to motivate my people.”⁵⁹ Mr. Reiss, chairman of the city’s Regional Transit Authority, said, “Those who want to see this city rebuilt want to see it done in a completely different way: demographically, geographically and politically.”⁶⁰ And Louisiana Congressman Richard Baker also stated “We finally cleaned up public housing in New Orleans. We couldn’t do it. But God did.”⁶¹

This evidence of racial intent may not be sufficient to support a finding that Defendants intended to discriminate against African Americans, but it does not need to. In light of the clear disparate impact, even evidence that merely suggests discriminatory intent is sufficient to weigh in favor of finding a violation of the FHA.

⁵⁸ (Bricker Decl. Ex. S, Bill Walsh, *Only ‘Best Residents’ to be Allowed Back in St. Thomas Complex*, THE TIMES-PICAYUNE (Apr. 24, 2006) available at <http://www.nola.com>.)

⁵⁹ (Bricker Decl. Ex. T, Eric Berger, *New Orleans Says it Won’t Give Free Ride*, HOUSTON CHRONICLE (Feb. 22, 2006), available at <http://www.chron.com/disp/story.mpl/front/3676263.html>.)

⁶⁰ (Bricker Decl. Ex. U, Christopher Cooper, *Old Line Families Escape Worst of Flood and Plot the Future*, THE WALL STREET JOURNAL (Sept. 8, 2005), available at <http://www.online.wsj.com>.)

⁶¹ (Bricker Decl. Ex. J, Susan Saulny, *Clamoring to Come Home to New Orleans*, THE NEW YORK TIMES (6/6/06), available at <http://www.nytimes.com>.)

ii. Defendants could have chosen a less discriminatory alternative.

Defendants must show that they could not have pursued legitimate goals through any means with a lesser disparate effect. The burden on Defendants is high, approaching the level of strict scrutiny. *See Oti Kaga, Inc. v. S. Dakota Housing Dev. Auth.*, 342 F.3d 871, 883 (8th Cir. 2003) (action must be “necessary” to exercise responsibilities); *City of Black Jack*, 508 F.2d at 1185 (requiring a showing that the action is “necessary” to a “compelling governmental interest”). The requirement of a “bona fide” justification means that a hypothetical justification is insufficient and Defendants must show, with record evidence, that their justification was the actual motivation for their decisions. *Huntington*, 844 F.3d at 939. Defendants have, to this point, only justified the barriers on reoccupancy and their demolition plan by arguing that the developments at issue are not habitable.⁶² Plaintiffs dispute this claim, but more importantly, repairing the damaged units would constitute a less discriminatory alternative to the complete demolition of the buildings.

The justifications proffered by the Defendants must relate to the exercise of their statutory authority. *Cf. Oti Kaga*, 342 F.3d at 883 (public housing authorities must justify “on the ground it is necessary to [the public housing authority’s] exercise of its funding responsibilities”). Defendants must offer justifications that relate to the fundamental purposes of the Fair Housing Act or another statute that they must execute. *Id.* HUD must consider the impact of its decision on the “racial groups whose lack of opportunities the Act was designed to combat.” *Otero v. New York City Housing Auth.*, 484 F.2d 1122, 1134 (2d Cir. 1973); *see also*

⁶² (Bricker Decl. Ex. N, *HUD Outlines Aggressive Plan to Bring Families Back to New Orleans’ Public Housing*, at <http://www.hud.gov/news>; Bricker Decl. Ex. BB, Anne Hawke, *HUD to Demolish Four New Orleans Housing Projects*, NPR (June 18, 2006), at <http://www.npr.org/templates/story/story.php?storyID=5493936>.)

NAACP, Boston Chapter v. Sec’y of HUD, 817 F.2d 149, 156 (2d Cir. 1987) (Breyer, J.). As then-judge Breyer stated:

If HUD is doing so in any meaningful way, one would expect to see, over time, if not in any individual case, HUD *activity that tends to increase, or at least, that does not significantly diminish, the supply of open housing.*

Id. at 156 (emphasis added).

A clearly less discriminatory alternative exists to Defendants’ plan, even if the plan serves a sufficiently important government interest in the first place. Defendants could immediately reopen habitable units and repair salvageable units. Given the severe shortage of housing in New Orleans—a fact that cannot be underscored enough and is perhaps unprecedented in the city’s history—preserving and repairing salvageable mostly brick structures so that displaced African-Americans can return home would not be an extraordinary or onerous alternative. Indeed, HUD has recognized as much in its “Best Practices” guide, by stating “[i]n tight housing markets, or where there is a deficit in available affordable housing relative to demand, HOPE VI grantees should pursue a replacement housing strategy that relies more heavily on hard public housing units.”⁶³

Defendants’ proposal—to allow habitable or repairable units (including some that suffered no water damage at all) to stand vacant and fall into total disrepair until new buildings can be designed and built largely for non-public housing residents—could take years. As a result, Plaintiffs will be forced to remain in their new “temporary” housing arrangements in other cities, where they will have to find new jobs, new schools, and new permanent residences, thereby guaranteeing that many will never be able to return. In the alternative, allowing Plaintiffs to return, even temporarily while redevelopment plans are developed and finalized,

⁶³ (Bricker Decl. Ex. R, *HOPE VI Best Practices and Lessons Learned 1992-2002*, published by HUD (June 14, 2002).)

would allow potentially thousands of Plaintiffs to return to their jobs, their schools, and their homes and, from there, seek out new housing arrangements if necessary. If Defendants had pursued this alternative, the discriminatory effect on the African American population displaced could have been completely avoided. Defendants' choice to adopt a plan with an enormous disparate impact when a much less discriminatory option was available provides strong evidence of a violation of the FHA.

iii. Plaintiffs' relief sought is not burdensome.

The final factor of a traditional FHA burden-shifting analysis, "the nature of the relief sought," also favors Plaintiffs. *Arlington Heights II*, 558 F.3d at 1293. This factor has traditionally been used to distinguish plaintiffs' efforts to compel public housing authorities to build new housing from the less burdensome instances in which plaintiffs seek to prevent public entities from interfering with plans to build. *Id.* Plaintiffs do not seek to require Defendants to construct new housing units. Indeed, the relief sought in this motion is simply to prevent Defendants from taking affirmative steps to demolish Plaintiffs' existing homes, and to direct Defendants to take steps to maintain the habitability of these units, and to cease obstructing Plaintiffs' return to those units that are habitable or repairable.

B. Plaintiffs Will Suffer Severe Irreparable Harm If Injunctive Relief Is Withheld.

Plaintiffs have suffered, and will continue to suffer, substantial irreparable harm absent injunctive relief from this Court. Plaintiffs have been displaced from their homes now for 11 months. Due to the rental housing shortage and lack of available local alternatives, many have not even been able to return to the City of New Orleans. Now, many of these Plaintiffs face permanent displacement due to Defendants' recently announced plans to demolish the C.J. Peete, B.W. Cooper, Lafitte and St. Bernard developments, even though Defendants themselves

claimed that many of the units in these buildings suffered only minor damage from the hurricane. In addition, nearly all Plaintiffs, including those whose units are not currently slated for demolition, still have not been allowed to return to their homes and have been given no confirmation that they ever will. In fact, Defendants have even prevented most Plaintiffs from returning to their units for the sole purpose of cleaning and making repairs in order to facilitate their return. As noted *supra*, Defendants have re-opened only approximately 1,000 units to date, and have announced intentions to open only approximately 1,000 more in the next couple of months.⁶⁴ This leaves over 60% of the prior public housing residents displaced—indefinitely. Many of these Plaintiffs are unnecessarily displaced, as a large number of the closed units could again be habitable in short order with little work and a simple matter of turning on the electricity (especially those that stood above the flood level).⁶⁵

As explained *supra*, by preventing Plaintiffs from returning to their homes, Defendants have violated Plaintiffs' due process rights. This deprivation of a constitutional right alone is sufficient to satisfy the irreparable harm factor. *See Louisiana Seafood Mgmt. Council, Inc. v. Foster*, 917 F. Supp. 439, 442 n.1 (E.D. La. 1996) (noting that, “[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary” (citation omitted)). In addition, in the fair housing context, other courts have found that “irreparable injury may be presumed from the fact of discrimination and violations of fair housing statutes.” *See Gresham & Metro Fair Housing Svcs. v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984).

⁶⁴ (Bricker Decl. Ex. B, HANO FAQ.)

⁶⁵ (*See* Bricker Decl. Ex. H, Bill Sasser, *Locking out New Orleans' Poor* (June 12, 2006), http://www.salon.com/news/feature/2006/06/12/nola_housing/print.html.)

The direct impact on Plaintiffs beyond simply losing their homes also demonstrates that an injunction is necessary to prevent irreparable harm. Some of Plaintiffs will lose their jobs if they cannot return home. Others face potentially dire medical consequences from losing access to their care providers, as well as in certain cases mental health issues related to their displacement. And the children of displaced residents should be allowed to return home and be spared further stigmatization and mistreatment in the schools and communities to which they have been relocated.

The possibility of permanent displacement due to demolition activities taken in violation of statutory and constitutional rights unquestionably causes irreparable harm, as does Defendants' failure to commit the resources needed to repair and reopen all public housing units that remain closed. Unless injunctive relief is awarded, Defendants' actions—or inaction—will persist, as demonstrated by the recent layoff announcement of 113 HANO employees. Plaintiffs are thus entitled to injunctive relief not only demanding that Defendants maintain the *status quo* and prevent the commencement of demolition of any public housing developments, but also requiring affirmative steps to maintain the habitability of all units, and to cease obstructing Plaintiffs' return to those units that are habitable or repairable.

C. Injunctive Relief Will Not Injure The Defendants.

Temporary injunctive relief will not harm any of the Defendants. HUD is “directed by Congress to implement national housing policy by creating decent, sanitary housing for low-income families” and to carry out a national housing policy “designed to remedy acute shortages of decent, sanitary housing for low-income families and to preserve rather than destroy existing housing by rehabilitation and other measures.” *See Cole v. Lynn*, 389 F. Supp. 99, 102 (D.D.C. 1975). Congress has recognized the increasing need to maintain public housing in the aftermath of the Gulf Coast hurricanes. When appropriating emergency funds for hurricane relief,

Congress directed HUD “to the extent feasible . . . [to] preserve all housing within the area declared a major disaster.”⁶⁶ HUD has ignored this charge, not to mention its duties under the U.S. Housing Act and the U.S. Constitution, by approving the demolition of buildings that had only minor to moderate damage from the hurricane, permitting thousands of previously occupied units to sit in disrepair while the employees trained to fix these units are let go, and by keeping closed those units that are sufficiently habitable such that previous tenants are not allowed to return home. Injunctive relief will require HUD to perform its assigned duties and nothing more.

Nor will HANO suffer any appreciable harm from emergency injunctive relief. To prevent HANO from continuing to neglect its duties to return Plaintiffs’ homes to habitable conditions and allow those Plaintiffs whose homes are already safe to reoccupy requires nothing from them that they are not already required by law to do.

Absent injunctive relief, many Plaintiffs stand to permanently lose their homes and remain indefinitely displaced in remote and/or undesirable housing as their homes remain vacant. Defendants, meanwhile, stand to lose little to nothing if temporary relief is granted. Accordingly, the balance of harms tips decidedly in favor of granting injunctive relief.

D. Injunctive Relief Will Further The Public Interest.

The public’s interest lies in the Defendants’ faithful application of the laws, consistent with the will and intent of Congress. *See Mylan Pharms., Inc. v. Shalala*, 81 F. Supp. 2d 30, 45 (D.D.C. 2000) (“It is in the public interest for courts to carry out the will of Congress and for an agency to implement properly the statute it administers.”). Here, Congress’s will and intent are clear: Defendants have been directed to preserve existing public housing “to the extent feasible.”⁶⁷ It is in the public’s interest to ensure that Defendants meet this legal duty. To

⁶⁶ Act of Dec. 30, 2005, 109 P.L. 148; 119 Stat. 2680.

⁶⁷ *Id.*

further the policy goals behind this and other statutes and regulations governing public housing demolitions, fair housing and leasing practices, as well as constitutional due process protections, the public interest requires that all demolition activities cease and that Plaintiffs be allowed to return to their units as quickly as reasonably possible until there has been a full determination of their rights.

V. CONCLUSION

For all these reasons, the Court should enter an order granting a preliminary injunction to preserve the *status quo* pending final resolution of this matter, including enjoining Defendants from demolishing any public housing in New Orleans, including units in the C.J. Peete, B.W. Cooper, Lafitte, St. Bernard, Florida and Desire public housing developments, and directing Defendants to take steps to maintain the habitability of these units and to cease obstructing Plaintiffs' return to those units that are habitable or repairable.

Dated: August 10, 2006

Respectfully submitted,

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