

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MISSISSIPPI STATE CONFERENCE NAACP, GULF
COAST FAIR HOUSING CENTER, DOROTHY
MCCLENDON, ZELDA WILLIAMS, RANGISMA
DILWORTH, and PAMELA LANDRY

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT,

Defendant.

Civil Action No:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Nature of the Case

1. This action addresses the Secretary of Housing and Urban Development's ("HUD") failure to conduct the statutorily required review of the State of Mississippi's plan to divert \$570 million in Community Development Block Grant ("CDBG") funds for hurricane disaster relief to a commercial port expansion project. Specifically, plaintiffs seek a declaration that, prior to approving the proposal, the HUD Secretary was required to review and assess the State of Mississippi's port expansion plan to determine, at a minimum, whether the proposal contained satisfactory certifications that the plan would comply with the Fair Housing Act ("FHA") and CDBG's low-to-moderate income ("LMI") benefit requirement. The plaintiffs also seek a declaration that the HUD Secretary violated his statutory duties by accepting the commercial port expansion plan without conducting such a review, and an injunction prohibiting

HUD from releasing or approving the obligation of any of the nearly \$600 million in CDBG funds.

2. In other words, Mississippi was required to demonstrate and certify, in its plan, that the funds would be used to affirmatively further CDBG's fair housing mandate, and that at least 50% of the grant money would be used for activities that benefit low-to-moderate income households. Legally, the HUD Secretary should not have approved the submitted plan unless it contained both certifications, and he was satisfied that both certifications were credible and accurate. Yet, the submitted plan did not even include any certification concerning fair housing. The plan did contain a certification stating that the proposal would satisfy the LMI benefit requirement, but nothing in the plan explains or supports that assertion. Under those circumstances, HUD should not have approved the plan.

3. HUD explained its inaction by stating that it had no discretion to review Mississippi's port expansion plan, and was required to approve the plan, as submitted. That politically convenient view misconstrues the plain language of the relevant statutes and regulations, and strains notions of simple common sense. Under HUD's untenable view, Mississippi was statutorily required to submit the plan to HUD for approval, even though HUD could do nothing but simply rubber-stamp it as "approved."

4. HUD's failure to act is of tragic consequence. The agency's misreading of the law allows Mississippi improperly to siphon off over a half-billion dollars in disaster relief funds for use on a commercial port redevelopment project when those funds are still desperately needed to provide sufficient affordable housing for Mississippi's low-to-moderate income families. In fact, HUD has acknowledged, as it must, that the submitted port expansion plan is

not satisfactory because it does not provide the required level of assistance to Mississippi's LMI households.

5. Accordingly, if HUD were required to discharge its legal duty to review the port expansion proposal prior to approval, it should compel a different result. It is necessary, therefore, for the Court to construe the relevant statutes and regulations, and to determine the nature and extent of HUD's oversight and approval authority.

Introduction

6. The enormity of the damage caused by Hurricane Katrina in 2005 has been well documented. The hurricane was the worst natural disaster in United States history. Ninety percent of the damage occurred in Louisiana and Mississippi, with the vast majority of destruction located in and around New Orleans and along Mississippi's Gulf Coast. More than 240,000 housing units in Mississippi, rental and owned, suffered damage, and over 100,000 Mississippians were displaced from their residences. At its peak, the Federal Emergency Management Agency ("FEMA") provided temporary shelter to over 45,000 Mississippi households.

7. The hurricane damage had a substantial and disproportionate impact on Mississippi's affordable housing. Analyses by the Mississippi Governor's Commission on Recovery, Rebuilding and Renewal, FEMA, and the Rand Corporation's Gulf States Policy Institute all concluded that Mississippi's low income renters were particularly hard hit. Almost 75% of the rental housing stock damaged by the hurricane (over 47,000 units) were small rental housing units. Over 13,000 of those rental units received major or severe damage. Fifty-two percent of the damaged rental units were rented to low income households, or about 37,000 units.

Of those 37,000 units, about a third (approximately 12,000 units) were severely damaged or destroyed.

8. The damage exacerbated an already tight rental market on Mississippi's Gulf Coast. Prior to Katrina, it is estimated that the Gulf Coast had an unmet demand for close to 13,000 affordable housing units, with 40% of Gulf Coast renters devoting more than one-third of their monthly income to housing expenses. Katrina damaged, destroyed, or rendered uninhabitable at least 65,000 housing units, a substantial portion of which were owned by or rented to persons of low-to-moderate income. Katrina damaged 2,534 out of 2,695 units of public housing in southern Mississippi. Accordingly, the dramatic, post-Katrina loss of additional rental stock, coupled with a corresponding and substantial increase in rents, and an equally substantial drop in employment, created a particularly acute problem.

9. Not surprisingly, therefore, it was immediately apparent to state and federal officials that disaster relief efforts should focus on the recovery of the housing market, with a priority on addressing Mississippi's LMI population.

10. The loss of such a large percentage of affordable housing made lower income residents especially dependent upon federally-funded housing recovery programs. With that understanding, Congress quickly acted in December 2005 to provide \$11.5 billion in disaster relief funds to the five states impacted by Hurricanes Katrina, Rita and Wilma. The funds were to be administered under the CDBG program created by the Housing and Community Development Act of 1974, 42 U.S.C. § 5301 *et seq.* (the "HCDA"). HUD allocated just over \$5 billion to Mississippi from this initial appropriation. HUD made it clear that the CDBG funds were to be used to address the recipient state's "unmet housing needs" and "concentrated areas of distress." With that guidance, each recipient state, including Mississippi, was required to

develop a plan for the proposed use of the CDBG funds, and submit it for HUD's review and approval.

11. In a supplemental appropriation, Congress provided an additional \$5.2 billion in CDBG funding for hurricane disaster relief to the five affected states, and in August of 2006, HUD allocated an additional \$423 million of those funds to the state of Mississippi. In total, Mississippi received \$5.481 billion in CDBG funding for hurricane disaster relief. Concerned about the continuing lack of affordable rental housing in the impacted areas, Congress directed that \$1 billion (19.33 percent on a *pro rata* basis) of the supplemental appropriation must be used to repair and reconstruct affordable rental housing stock.

12. The statutorily created CDBG program is administered by HUD, and is the federal government's largest and most widely available source of financial assistance to support state and local governments' initiatives to rehabilitate housing and revitalize communities. All eligible activities under CDBG must address one of three national objectives: (1) principally benefit low and moderate income persons; (2) aid in eliminating or preventing slums or blight; or (3) meet particularly urgent community development needs because existing conditions pose a serious and immediate threat to the public.

13. Mississippi has failed to address the housing crisis adequately, and has neglected the dire and persistent need for affordable rental housing. Rather, Mississippi's programs de-emphasized LMI housing needs and used restrictive eligibility standards to significantly reduce the number of homeowners who could receive grant awards. It took Mississippi 18 months to announce its first program to use CDBG disaster relief funds to promote affordable rental housing. Only three of Mississippi's CDBG-funded programs were designed to meet LMI needs, and they were allocated a total of \$1.157 billion, which is only 21% of the available

CDBG disaster relief funding. Mississippi, alone among the recipient states, regularly sought and received a waiver from CDBG's requirement that at least 50% of the program funding be used for the benefit of its LMI residents. To date, Mississippi has devoted only 21% of its \$5.481 billion to programs that meet the 50% LMI benefit requirement.

14. As a result, today in Mississippi, a substantial need for affordable housing remains. For example, it is estimated that Mississippi's Small Rental Assistance Program will restore between 6,500 to 7,500 affordable rental units. That is only 40-45% of the units severely damaged by Katrina, and only 13-16% of the approximately 47,000 rental units that received some damage as a result of Katrina. As of November 2008, approximately 5,500 Mississippi households, representing approximately 15,000 persons, remain in FEMA transitional housing programs or in Mississippi Emergency Management Agency temporary cottages. An unknown but substantial additional population, like plaintiffs Zelda Williams and Rangisma Dilworth, are housed temporarily in private rental housing that is inadequate. There is little, if any, affordable rental housing on the Gulf Coast to accommodate these people. As several members of Congress have stated, Mississippi has designed its housing programs "to leave renters and low-income families out in the cold," and has effectively closed the door to "much needed recovery funds" for Mississippi's low income families.

15. In this context, Mississippi's plan to use close to \$600 million dollars to redevelop and expand the commercial port in Gulfport, and HUD's approval of that plan, are unconscionable. The commercial port at Gulfport only suffered \$50 million worth of damage, and the costs to repair that damage were covered by insurance and other federal funds. It is brazenly disingenuous for Mississippi to suggest that the port proposal is a particularly urgent community development need. It is, therefore, an inappropriate use of emergency CDBG funds.

As a *New York Times* editorial aptly stated, it “is not what Congress intended when it voted to distribute Katrina aid through [CDBG].”

16. Instead of funding much needed housing units for low-to-moderate income individuals, Mississippi intends to use these federal CDBG funds improperly as a “windfall” to fund a substantial redevelopment and expansion of the port facility. The requested diversion of CDBG funds is nothing more than an attempt to realize a twenty-year master plan for port expansion that was originally conceived in 2003 -- two years before Hurricane Katrina. If allowed to move forward, it would be the single largest expenditure of taxpayer funds on any state enterprise in the history of Mississippi. Moreover, the requested funds are ten times the amount of actual hurricane-related damage to the port facility. Prior to Katrina, the entire port facility had a total asset value of \$127.5 million.

17. Generally, commercial ports, including the Port of Gulfport, are run as self-sufficient state enterprise agencies, which finance capital expansions through borrowing (issuing revenue bonds, loans) and internal funds. The process of funding improvements through private capital markets imposes discipline on the expansion projects, because the plan can move forward only if investors believe that the plan provides a reasonable opportunity to repay the bonds. As contemplated in the 2003 master plan, the capital expansion of the port facility was to be financed by these traditional sources of funding, not federal funds earmarked for disaster relief.

18. After Congress appropriated the \$5.481 billion dollars in CDBG disaster relief funding, Mississippi changed its mind, and submitted an amended plan to HUD seeking approval to divert nearly \$600 million in funds previously earmarked for homeowner assistance to the port expansion plan. The Port of Gulfport now looks to complete a half-billion dollar capital

expansion without investing any of its internal funds in the project, and without incurring an obligation to pay back a cent. There is no risk.

19. It is readily apparent that this is a blatant misuse of the CDBG funds. Despite the continuing extreme need for affordable rental housing, Mississippi has devoted a total of only \$250 million to its Small Rental Assistance Program, but is now poised to spend over twice that on the port expansion project.

20. In approving the diversion of funds, then HUD Secretary Alphonso Jackson wrote to Governor Haley Barbour that he remained concerned that Mississippi was diverting emergency federal funding from “other more pressing recovery needs, most notably affordable housing.” In testimony before Congress, Secretary Jackson stated that he was dissatisfied with the port expansion proposal, but lacked the statutory discretion to reject the submitted plan.

21. To the contrary, the law gives the HUD Secretary not only the discretion, but the affirmative duty, to review Mississippi’s plans, and approve them only if certain statutory and regulatory requirements have been met. Here, had HUD discharged that obligation, by its own admission, it would not have approved the port expansion plan. Under a proper construction of the relevant statutes and regulations, HUD should be compelled to reassess its approval of the port expansion plan, and approve it only if Mississippi can provide a legally sufficient and satisfactory certification that the plan meets the required CDBG mandates concerning fair housing and benefits to LMI residents.

Jurisdiction and Venue

22. This Court has jurisdiction under (a) 28 U.S.C. §1331, because this lawsuit alleges a violation of duties imposed by federal law and requires the interpretation and

application of federal law, and (b) the Administrative Procedure Act, 5 U.S.C §701 *et seq.*, which authorizes this Court to conduct judicial review of the federal agency action at issue.

23. Venue is proper in the United States District Court for the District of Columbia under 28 U.S.C. §1391(e) because this is the District in which the defendant, the Secretary of Housing and Urban Development, “resides” for purposes of performance of his official duties.

Parties

24. The Mississippi State Conference of the National Association for the Advancement of Colored People (“Mississippi NAACP”) is a private, non-profit membership organization chartered in 1945 under the laws of the state of Mississippi and located at 1072 West J.R. Lynch Street, Jackson, Mississippi. The Mississippi NAACP’s members include many Mississippians of low-to-moderate income, who either own or rent residences in the counties affected by Hurricane Katrina.

25. The Gulf Coast Fair Housing Center (“GCFHC”) is a private, non-profit fair housing organization incorporated in 2003 under the laws of the state of Mississippi and located at 2218 24th Avenue, Gulfport, Mississippi. GCFHC’s purpose is to eliminate housing discrimination and secure equal housing opportunities for persons of low and moderate income throughout the Gulf Coast by engaging in education, outreach, advocacy, and enforcement activities with respect to fair housing laws. The GCFHC is active in five Mississippi Gulf Coast counties: George, Hancock, Harrison, Jackson, and Stone.

26. Dorothy McClendon is an African American citizen of Gulfport, Mississippi, who currently resides at 1319 19th Avenue, Gulfport, Mississippi. Ms. McClendon’s residence was rendered uninhabitable by Hurricane Katrina. Because Ms. McClendon’s residence sustained wind damage as opposed to storm surge damage, she was told she was ineligible for assistance

from the Mississippi Homeowner's Assistance Program. Ms. McClendon's residence has not been permanently repaired. Currently, she occupies her residence part of the time and a Federal Emergency Management Agency trailer ("FEMA trailer") the remainder of the time. The FEMA trailer is not equipped for disability access, which Ms. McClendon requires. Her current annual income is \$13,200, which places her just above the 30 percent area median income bracket. The FEMA trailer Ms. McClendon temporarily resides in is due to be removed on or before March 1, 2009, and her home is not permanently habitable at present.

27. Zelda Williams is an African American citizen of Biloxi, Mississippi who currently resides in a rented room at 1910 Great Street, Biloxi, Mississippi. Prior to Hurricane Katrina, Ms. Williams rented a residence at 346 Hays Street, # 1, Biloxi, Mississippi. Hurricane Katrina rendered her rental unit uninhabitable and, since that time, despite efforts to find permanent rental housing for herself and her eight-year-old daughter, she has been unable to do so. Ms. Williams's annual income for 2007 was under \$11,000, which places her below the 30 percent area median income bracket.

28. Rangisma ("Ann") Dilworth is a resident of Biloxi, Mississippi who is temporarily residing at various locations, including a room at 1910 Great Street, Biloxi, Mississippi and a room at her daughter's residence, along with eight other family members, at 5680 Woodstock, Gautier, Mississippi. Prior to Hurricane Katrina, Ms. Dilworth resided at Longwood Apartments, 2012 West 2nd Street, Long Beach, Mississippi. During Hurricane Katrina, she was ordered to evacuate and her apartment complex was completely destroyed. Since the hurricane, Ms. Dilworth has been unable to find permanent rental housing. Her annual income is \$10,300, which places her below the 30 percent area median income level.

29. Pamela Landry is a citizen of Hancock County, Mississippi who currently resides in a FEMA trailer. Prior to Hurricane Katrina, she owned a mobile home at 11117 Road 259, Picayune, Mississippi. Ms. Landry's residence suffered severe wind damage from Hurricane Katrina, principally from a tree falling on the structure. She was ineligible for the Mississippi Homeowner Assistance Program because her residence was damaged by wind, and her application for a grant was refused. Ms. Landry did not have personal homeowner's insurance and was also ineligible for an SBA loan because she did not have enough income to qualify. Ms. Landry has been living in temporary FEMA trailer housing since January 2006, and has been unable to obtain permanent replacement housing. Her adjusted gross income for 2007 is \$21,000, which puts her right at the 50 percent area median income bracket.

30. Defendant United States Department of Housing and Urban Development (HUD) is a Department of the Executive Branch of the United States Government. HUD was created by Congress pursuant to 42 U.S.C. § 3532. HUD is responsible for the administration, funding, and supervision of the Community Development Block Grant program.

Factual Allegations

I. Hurricane Katrina Had A Disproportionate Impact Upon Mississippi's Minority and LMI Residents.

31. On August 29, 2005, Hurricane Katrina struck the Mississippi Gulf Coast. Hurricane Katrina's damage was disproportionately borne by low-to-moderate income households. For Harrison, Hancock and Jackson counties, about 65% of the housing units exposed to the storm surge, and over 57% of the units exposed to flooding, were occupied by households with incomes below the U.S. median household income level (approximately \$42,000) as of the year 2000.

32. African Americans in southern Mississippi are disproportionately more likely than whites to be living in poverty or in lower-income households. African Americans in southern Mississippi are disproportionately more likely than whites to be renters instead of homeowners. Lower-income southern Mississippi renters, (who themselves are disproportionately more likely to be African American) are substantially more likely to occupy housing with one or more disadvantageous housing conditions, such as lacking complete kitchen or plumbing facilities, overcrowding, or monthly costs greater than 30% of household income.

33. Historical racial discrimination in residential communities shaped how some African American communities in southern Mississippi experienced Hurricane Katrina. The railbed of the CSX Railroad Company runs from east to west across the Gulf Coast, and forms a racial division between African American communities, including Gaston Point, the Quarters, Soria City, North Gulfport, and Handsboro (to the north of the railbed) and white residential areas (to the south of the railbed).

34. The CSX railbed prevented Hurricane Katrina's tidal storm surge from impacting these African American communities. Wind damage of equal magnitude, however, equally affected both the white communities to the south of the railbed and the African American communities to the north.

II. The Federal Government Moved Quickly To Appropriate \$16.3 Billion in Emergency Supplemental CDBG Funds For the Five Impacted Gulf States, Intending To Prioritize Benefit To Low-to-Moderate Income Families.

35. The CDBG program, which is a product of the Housing and Community Development Act of 1974, 42 U.S.C. § 5301 *et seq.* (the "HCDA"), has been administered by HUD for more than 30 years. On several occasions, Congress has appropriated supplemental CDBG funds to assist states and communities in recovering from natural disasters. According to

the Congressional Research Service, “[t]he CDBG program...is the federal government’s largest and most widely available source of financial assistance to support state and local government-directed neighborhood revitalization, housing rehabilitation, and economic development activities.” Section 101(c) of the HCDA states that CDBG’s “primary objective...is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.”

36. The expenditure of CDBG grant monies is limited by statute to the accomplishment of specific objectives. Recipients of CDBG funds must certify *prior to receipt* that, among other things, (1) the grant will be conducted and administered in conformity with the federal Civil Rights Act and Fair Housing Act, and specifically that the grantee will affirmatively further fair housing, (2) the projected use of funds has been developed so as to give maximum feasible priority to activities which will benefit low-to-moderate income families or aid in the prevention or elimination of slums or blight, and (3) the aggregate use of the funds will principally benefit persons of low and moderate income (“LMI persons”) in a manner that ensures that not less than 70% of the money is used for activities that benefit such persons. 42 U.S.C. §5304(b)(2) and (3).

37. On December 31, 2005, the President signed Congress’s emergency supplemental appropriations bill, Public Law 109-148, which provided \$11.5 billion to the CDBG program specifically for Mississippi, Louisiana, Alabama, Texas and Florida to address the massive emergency caused by Hurricanes Katrina, Rita and Wilma, particularly the urgent need for housing. The primary purpose of the funds was to address the critical unmet housing needs in impacted areas.

38. HUD was responsible for allocating the emergency CDBG funds among the recipient states. HUD described the intended use of the allocated funds in a Notice, which was published in the *Federal Register* on February 13, 2006 HUD:

[t]he funds allocated are intended by HUD to be used toward meeting unmet housing needs in areas of concentrated distress. ‘Unmet housing needs’ is defined to include, but not be limited to, those of uninsured homeowners whose homes had major or severe damage. “Concentrated distress” is defined as the total number of housing units with major or severe housing damage in counties where 50 percent or more of units had major or severe damage.

39. HUD allocated to Mississippi \$5,058,185 billion of the \$11.5 billion in appropriated CDBG funds.

40. On March 6, 2006, in testimony before the Senate Appropriations Committee, Mississippi Governor Haley Barbour requested additional funding not covered in the December, 2005 appropriation to be used for infrastructure projects, including, *inter alia*, (1) the rebuilding and the redevelopment of the Port of Gulfport, and (2) the relocation of a CSX railway line from near the coast to a location further inland.

41. In June, 2006, Congress passed the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, Public Law 109-234, which included an additional \$5.2 billion to the affected states to further support the Gulf Coast’s hurricane recovery efforts (“FY2006 Appropriation”). Recognizing that recovery efforts were not adequately addressing the acute problem with affordable rental housing in the impacted areas, Congress directed that not less than \$1 billion of FY2006 Appropriation funding must be used for the repair, rehabilitation, and reconstruction of affordable rental housing stock, including public and other HUD assisted stock. Congress rejected Governor Barbour’s request to appropriate additional funds for the Port of Gulfport redevelopment project and other infrastructure projects.

42. Under the FY2006 Appropriation, Mississippi received an additional \$423 million allocation in CDBG funding from HUD, increasing their total CDBG funds from the two emergency appropriations to \$5.481 billion. Under the terms of the appropriation, Mississippi was required to use a minimum of the additional \$81,777 million of the CDBG funding for repair, rehabilitation, and reconstruction of the affordable housing stock. This appropriation did not provide funding for any of the major infrastructure projects requested by Governor Barbour, including the State Port at Gulfport.

43. Mississippi's homeowner assistance grants were limited to households who experienced storm surge damage. Moreover, Mississippi's initial homeowner assistance program approved by HUD on April 4, 2006 excluded from eligibility homeowners who did not have homeowners' insurance even though HUD's February 13, 2006 Notice specifically indicated that the "unmet housing needs" that the grant was designed to cover included uninsured homeowners. Since the homeowner assistance program was implemented, over \$1.8 billion in grant assistance has been paid out to approximately 24,000 households. Mississippi's limitation of assistance to those with storm surge damage excluded nearly 14,389 Mississippi households with major to severe wind damage, of which 5,393 were uninsured. In areas of concentrated distress -- Hancock, Harrison and Jackson counties -- this limitation excluded relief for 7,302 households with major to severe wind damage, of which over 2,000 were uninsured.

III. To Assist Recovery Efforts, HUD Was Given Discretion To Waive Certain CDBG Requirements.

44. As with previous disaster relief appropriations, Congress granted the HUD Secretary authority to waive CDBG requirements, which, in the Secretary's opinion, would inhibit the efficient use of the CDBG funds for recovery efforts. Congress prohibited HUD's authority to waive requirements in four areas: nondiscrimination; environmental review; labor

standards; and fair housing. Congress also gave the HUD Secretary the authority to specify “alternative requirements” for the administration and use of the emergency CDBG funds.

45. Congress further authorized the HUD Secretary to modify the CDBG program’s income target provisions by allowing the recipient states to allocate only 50% of the emergency CDBG funds to activities for the benefit of their LMI residents, rather than the 70% allocation required under the CDBG statute. In its February 13, 2006 Notice, HUD stated that it was “waiving the 70 percent overall benefit requirement, leaving the 50 percent requirement, to give grantees even greater flexibility to carry out recovery activities within the confines of the CDBG program national objectives.”

46. Further, Congress allowed the HUD Secretary to entertain requests from the recipient states for a waiver of the 50% LMI benefit requirement, but instructed that such requests could be granted only if the Secretary found that the “waiver would not be inconsistent with the overall purpose of the statute,” and found that there was a “compelling need” for the waiver request.

47. To receive the emergency CDBG funds for hurricane disaster relief, the recipient states were required to submit a plan to the HUD Secretary detailing the proposed use of the funds, including criteria for eligibility and how the use of funds will address long-term recovery and restoration of infrastructure.

IV. HUD Retained Significant Oversight, Approval and Enforcement Authority Over the Use of the Emergency CDBG Funds Allocated for Hurricane Disaster Relief.

48. HUD published the “alternative requirements” it promulgated to govern the administration of the emergency CDBG funds in the February 13, 2006 Notice.

49. In exercising the authority granted by Congress, HUD did not do away with its oversight, approval and enforcement authority conferred upon HUD by the HCDA and P.L. 109-

148. While HUD waived certain requirements of the CDBG program in its implementation of the emergency CDBG allocation for hurricane relief, those requirements were replaced by alternative requirements, which were specifically-tailored to disaster relief but set out substantive and procedural parameters similar to the historical CDBG requirements.

50. Significantly, under the alternative requirements specified in the February 13, 2006 Notice, 71. Fed. Reg. 7666, HUD continued to require, *inter alia*, that the recipient states provide the required “certifications” concerning the LMI benefit requirement and fair housing.

51. Furthermore, HUD preserved the existing substantive requirements for the “certification,” which included: (1) that the applicant for such funding provide supporting evidence for the certification; (2) that HUD have the ability to inspect the evidence; and, (3) that HUD have the ability to “determine otherwise,” *i.e.*, to determine that the certification is not supported by the evidence and not accurate.

52. HUD was very precise in 71 Fed. Reg. 7666 with respect to waivers of the LMI benefit requirement. The operative section (entitled Applicable Rules, Statutes, Waivers and Alternative Requirements) first said that, “[e]xcept as described in this Notice, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570, shall apply to the use of these funds.” Then, insofar as HUD waived certain statutory and regulatory requirements, the Notice explicitly *specified* the waived provision, right down to the paragraph or even the sub-paragraph. HUD made no wholesale waivers, *e.g.*, by Part or sub-Part.

53. Accordingly, Congress and HUD did not eliminate or otherwise modify the applicable certification requirements for receipt of the emergency CDBG funding.

54. The CDBG statute provides that grants of CDBG funds “shall” be made “only” if the prospective grantee makes the required certifications described “to the satisfaction of the [HUD] Secretary.” Congress, therefore, has both (1) assigned the Secretary a non-waivable duty to review and assess the quality of the requisite certifications *before* making CDBG grants, and (2) given the Secretary a measure of discretion in assessing the requisite certifications to determine whether they have been made to his satisfaction.

55. The Secretary has promulgated extensive regulations that give effect to this statutory instruction. Those regulations:

(1) enumerate the certifications that must be made by an applicant for a Community Development Block Grant, 24 C.F.R. §91.325;

(2) define a “certification” as a written assertion “based on supporting evidence,” and provide that in assessing the certification HUD will “inspect[] the evidence and provid[e] due notice and opportunity for comment,” 24 C.F.R. §91.5;

(3) provide that HUD “will review” an applicant’s consolidated plan, including the requisite certifications, and will “disapprove a plan or portion of a plan” if, among other things, the certifications in it are not satisfactory to the Secretary, 24 C.F.R. §91.500(a); and,

(4) provide that the Secretary will deem the requisite certifications *unsatisfactory* (and therefore disapprove the request for CDBG funds) if, among other things, the applicant’s past failures to comply with its grant certifications cast doubt on its ability to do so in the future, or if there is evidence, not directly involving the applicant’s performance under the CDBG program, that tends to challenge in a substantial manner its certification of future performance. 24 C.F.R. §570.485(c).

56. Except for reducing the LMI benefit requirement from 70% to 50%, neither Congress nor the Secretary has abrogated or waived the Secretary's statutory and regulatory duties and powers described above, in connection with HUD's administration of the emergency CDBG funding appropriated for hurricane disaster relief.

V. Mississippi's HUD-Approved Disaster-Relief Programs Fail To Provide Adequate Recovery Assistance To the State's LMI Population.

57. Mississippi was required to develop, and submit for HUD approval, a formal action plan as a prerequisite to receiving funding. Rather than submit an omnibus disaster-relief plan that would account for the entire \$5.481 billion in allocated appropriations, Mississippi adopted a novel, piece-meal approach, by submitting "partial" action plans for nine different subject matter areas, starting on March 31, 2006 and continuing to the latest plan submitted on July 2, 2008. Moreover, several amendments were made to each partial action plan that Mississippi submitted to HUD. The latest amendment concerned the plan to expand the Port of Gulfport, the plan at issue in this case. That amendment was announced publicly by Mississippi on October 27, 2008, and approved by HUD on November 21, 2008 -- three days after Mississippi submitted it to HUD.

58. The Mississippi Development Authority ("MDA") describes the various partial plans at its website found at <http://www.mississippi.org/content.aspx?url=/page/3623&>. They include the following:

(1) **Homeowner Assistance Grant Program:** MDA submitted an application for \$3.26 billion for "Phase I" of the Homeowner Assistance Grant Program on March 31, 2006. By press release dated April 4, 2006, HUD Secretary Alphonso Jackson stated that he had "approved" this request. A "Phase II" of this program was submitted to HUD on December 5, 2006, redirecting \$700 million of the \$3.26 billion from Phase I, leaving approximately \$2.6

million for Phase I. In a December 20, 2006 press release, Secretary Jackson announced he had “approved” Phase II;

(2) **Public Housing Program:** MDA submitted an application for \$105 million on May 17, 2006. By a press release issued on August 17, 2006, HUD announced it had “approved” this program;

(3) **Regional Infrastructure Program:** MDA submitted three applications, starting on July, 7, 2006 (\$33 million), then on March 6, 2007 (\$553 million) and last on April 24, 2007 (\$55 million), seeking a total of \$641 million. HUD issued a press release on August 15, 2006, in which it announced that it had “approved” the first of these applications. Another HUD press release issued on July 11, 2007 announced the “approval” of the second of these applications;

(4) **Ratepayer and Wind Pool Mitigation:** MDA applied for \$440 million for these programs in July 2006, and they were “approved” by HUD;

(5) **Economic Development Program:** MDA applied for \$500 million on December 15, 2006. By a press release dated December 20, 2006, HUD announced it had “approved” this request. On August 20, 2007 MDA applied for approval to redirect an additional \$150 million of the remaining \$2.3 billion allocation for Homeowner Assistance Phase I Grants to the Economic Development Program for Community Revitalization Grants, making the total amount allocated for the Economic Development Program \$650 million, and decreasing the amount available under Phase I to \$2.15 billion. HUD approved this diversion of funds from the Phase I Homeowner Assistance Program;

(6) **Small Rental Assistance Program:** On April 26, 2007, MDA proposed a program to help owners of small rental properties to repair their property. A total of \$262.5

million was to be used for this program. By a press release dated July 11, 2007, HUD announced it had “okayed” this program;

(7) **Long-Term Workforce Housing:** On April 24, 2008, MDA submitted a proposal to reprogram \$241 million of Phase II of the Homeowner Assistance Grant Program to the Long Term Workforce Housing Program, along with the remaining \$109,000,000 from the second emergency appropriation, making the total amount allocated for Long Term Workforce Housing \$350,000,000. By press release of June 25, 2008, HUD indicated it had “accepted” this plan;

(8) **Hancock County Long-Term Recovery Program:** On July 2, 2008, MDA submitted a proposal to HUD to redirect \$200 million from Phase I and Phase II of the Homeowners Assistance Program to programs to support infrastructure and community revitalization recovery in Hancock County. One newspaper report indicated that some the community revitalization funds were slated to go towards construction of a marina. Upon information and belief, on July 3, 2008, HUD informed the MDA that it had “accepted” this proposal; and,

(9) **Port of Gulfport Restoration (the subject of this lawsuit):** On December 12, 2007, MDA submitted a proposal to HUD to redirect \$600 million of the \$2.15 billion allocation remaining in Phase I of the Homeowner Assistance Grant Program to the Port of Gulfport Restoration Program. In a letter to MDA from Secretary Jackson dated January 25, 2008, HUD indicated its “acceptance” of this diversion of funds. Curiously, this was the first time HUD described its approval of one of the MDA’s partial action plans as an “acceptance,” rather than as an “approval.”

59. For five of the nine partial action plan areas -- (1) Phase I of the Homeowners' Assistance Program, (2) the Ratepayer and Windpool Mitigation Program, (3) the Regional Infrastructure Program (on two occasions), (4) the Economic Development Program, and (5) the Hancock County Long-Term Recovery Program -- MDA sought a waiver of the requirement that 50% of these funds benefit LMI persons. In each instance, HUD granted the request. The following table adapted from the format in the Notice announcing the August 24, 2007 waiver, 72 Fed. Reg. 48808, enumerates these waivers:

MDA Action Plan / Proposal to HUD	Budget	Date of HUD's Waiver of Congress's 50% LMI Requirement
Infrastructure Program	\$600 million	August 24, 2007
Economic Development and Community Revitalization (additional \$150 diverted from Phase 1)	\$500 million	March 6, 2007
Regional Infrastructure Program--Master Plan and Emergency Infrastructure	\$33.075 million	October 24, 2006
Ratepayer and Windpool Mitigation	\$410 million	October 24, 2006
Phase I Compensation For housing loss (reduced by	\$3.4 billion	June 14, 2006

\$700 million diverted to Phase II, which did not require a waiver)		
Hancock County "Ground Zero" Recovery Program diverted from Phase I and II	\$200 million	[Not yet published]

60. On October 27, 2008, MDA published an amendment to the port restoration plan, which continued to seek a diversion of almost \$600 million of housing assistance funds, but for a greatly expanded Port project. The amended proposal claims it will not negatively impact "other potential beneficiaries, *i.e.*, low and moderate income-intended beneficiaries of the restoration program." There is, however, no description of job benefits, cost per job, and no discussion of its expanded cost, or other sources of revenue to cover the expanded restoration.

61. MDA submitted the final amended port restoration plan to HUD on November 18, 2008 and HUD "accepted" the plan on November 21, 2008.

62. The MDA did not seek a waiver of the 50% LMI benefit requirement for the Port of Gulfport Restoration Program. Yet, MDA has provided no evidence to support its contention in the port plan that at least 50% of the grant monies would be used for activities benefiting Mississippi's LMI residents.

63. To date, Mississippi has received from HUD a waiver of the 50% LMI benefit requirement for approximately \$4.443 billion of the total \$5.481 billion (or 81%) in emergency CDBG funds it has allocated.

64. To compound the waiver issue, the MDA's eligibility requirements for its homeowners assistance programs were unjustifiably restrictive, and provide inadequate assistance to LMI homeowners. For example, Phase I of the MDA's Homeownership Assistance Program ("Phase I Plan") provided one-time grants of up to \$150,000 only to single-family homeowners whose properties were insured and located outside of the pre-Katrina designated flood zone. Excluded from this phase of relief were all uninsured single-family homeowners, all owners of rental properties, and all property owners whose property lies within the flood zone, many of whom were LMI and un- or underinsured.

65. As a result, there was significant objection to the MDA's request to waive the 50% LMI benefit requirement for the Phase I Plan because of its failure to provide adequate housing assistance to LMI residents, the very group that the Governor's own Commission on Recovery, Rebuilding and Renewal had identified as disproportionately affected by the storm. A written objection submitted in opposition to the waiver request, which detailed the plan's failure to meet the rental housing crisis, or assist uninsured homeowners, as well as the plan's failure to affirmatively further fair housing, is attached as Exhibit 1.

66. Five days after submission of the Phase I Plan, HUD announced it had "approved" the plan, and by Notice published on June 14, 2006 in the *Federal Register*, 71 Fed. Reg. 34457, granted MDA's request for a waiver of the 50% requirement. In this waiver, HUD found that there was a compelling need to "re-establish homeowners outside the flood plain," but never explained why it agreed to leave uninsured persons out of this coverage; nor did HUD address the complete lack of assistance for rental housing.

67. The June 14, 2006 Notice tacitly acknowledged the Phase I Plan's failings by stating that Mississippi:

has agreed to examine other housing needs and to pursue other sources of funding to provide assistance for other compelling housing needs, such as for homeless and special needs populations, for low income renters, and for uninsured low-income homeowners. . . . [Approval of the waiver is granted] provided that the state must give reasonable priority for the balance of its funds to activities which will primarily benefit persons of low and moderate income.

68. Since the June 14, 2006 Notice, MDA’s quarterly reports demonstrate the state’s failure to provide funding to LMI persons. The June 30, 2007 report showed MDA had spent less than 1% of CDBG funds for the benefit of LMI persons. The March 31, 2008 showed MDA had spent only 13.12% of the CDBG funds for LMI persons. The September 30, 2008 report, the last publicly available, shows the overall LMI benefit percentage at 0.02%, but the State explains that it was still adjusting its data and was therefore not reporting low-to-moderate income benefit data. Thus, each time HUD approved an MDA proposal, the information showed that Mississippi was not close to meeting the 50% LMI benefit requirement that Congress had set when it appropriated this CDBG money. This is illustrated by the following table:

HUD-Approved Program	Date of HUD Approval	Minimum Overall Benefit Percentage¹
Homeowner Grants Phase I	April 4, 2006	0
Public Housing Program	August 17, 2006	27
Ratepayer and Windpool	August 31, 2006	27
Economic Development	December 15, 2006	27

¹ According to nearest Mississippi Performance Reports (“DRGR’s”) filed with HUD and accessible at this link: <http://www.mississippi.org/content.aspx?url=/page/3707&>

Infrastructure	July 11, 2007	0.73
Small Rental Assistance	July 11, 2007	0.73
Long Term Workforce Housing	June 25, 2008	0.01
Hancock County Ground Zero	July 3, 2008	0.01

69. Each time HUD granted a waiver of the 50% requirement, it was with the proviso that Mississippi “must give reasonable priority for the balance of its funds to activities that will primarily benefit persons of low and moderate income.”

70. HUD published the last waiver approval on August 24, 2007, and by that date virtually all of the allocated CDBG funds had already been dedicated to MDA’s various partial action plans. Nonetheless, HUD, again, granted the MDA’s request for a waiver of the 50% LMI benefit requirement, and, again, conditioned its waiver on this same proviso “that the state must give reasonable priority for the balance of its funds to activities that will primarily benefit persons of low and moderate income.” At that time, the last quarterly report submitted by MDA for the period ending June 30, 2007 indicated the it had spent less than 1% of the emergency CDBG funds on activities benefiting LMI residents.

71. The August 24, 2007 Notice further stated that, “[p]reviously, the state agreed to examine other housing needs and to pursue other sources of funding to provide assistance for other compelling housing needs, such as for the homeless and special needs populations, for low-income renters, and for uninsured low-income homeowners.” Failing to honor that agreement, the MDA nonetheless sought another waiver, and HUD approved it.

72. As of August 2007, only three of Mississippi's CDBG-funded programs -- Phase II of the Homeowners Assistance Program, the Public Housing Program, and the Small Rental Assistance Program -- were designed to meet the needs of LMI persons, and were provided a total of \$1.067 billion (or only about 18%) of the emergency CDBG funds allocated. And, as of August 2007, even those insufficient funds had not yet been spent to implement the three programs.

73. Accordingly, by August 2007, at the latest, it was apparent to HUD that Mississippi had ignored CDBG mandates, and had dedicated an inadequate level of funding for well-identified acute and unmet housing needs, such as rental properties -- the type of housing most needed for LMI and minority persons and that HUD itself recognized as the purpose of the emergency allocation in its February 13, 2006 Notice. As of August 2007, only \$362.5 million (6.6% of the total allocated emergency CDBG funds) had been allocated to the two rental housing programs, the small rental assistance and public housing, and no funds had yet been spent on these programs.

74. It is in this context that MDA submitted to HUD its September 2007 proposal to divert \$600 million of emergency CDBG funds, which had been previously allocated to the Phase I Homeowners' Assistance Program, to fund the construction of a major expansion of the commercial Port of Gulfport. This proposal, unlike the MDA's earlier submitted partial action plans, was submitted without any consultation with interested organizations in the hurricane affected area.

VI. The MDA's Port Restoration Plan Does Not Address Hurricane Damage, Rather It Uses Emergency CDBG Funds To Carry Out A Port Expansion Plan Conceived Years Before Hurricane Katrina.

75. The State of Mississippi has fifteen commercial ports: three on the Gulf Coast, six on the Mississippi River or its tributaries, and six on the Tennessee-Tombigbee Waterway. The three Gulf Coast ports -- the Port of Pascagoula, the Port of Gulfport, and the Port of Bienville -- suffered approximately \$100 million in assessed value as a result of Hurricane Katrina. Founded in 1902, the Port of Gulfport (hereinafter "the Port") was transferred from ownership of the City of Gulfport to the State of Mississippi in 1960.

76. The Port is governed jointly by the Mississippi Development Authority ("MDA") and the Mississippi State Port Authority ("MSPA"), a five-member Board of Port Commissioner made up of local and gubernatorial appointees who serve staggered five-year terms. Three members are appointed by the Governor, one member by the Harrison County Board of Supervisors, and one by the City of Gulfport.

77. As a State Enterprise Agency, the Port is intended to be self-sufficient. The MSPA's website notes that "[t]he port's mission is to be a profitable, self-sufficient port providing world-class maritime terminal services to present and future customers and to facilitate the economic growth of Mississippi through the promotion of international trade and creation of employment."

78. As an Enterprise Agency, the Port receives no annual general fund allocation from the Mississippi Legislature. The Port operates from revenues generated by license and user fees and tenant rents, including rents from its two casino lessees. In addition, the Port receives from Harrison County a portion of ad valorem tax collections and earns interest on excess revenues.

79. Capital expansion of the Port has been generally financed through bonds and loans and internal funds. The most recent debt issued was \$40 million in fiscal year 1999 for the expansion and addition of terminal facilities.

80. At the end of fiscal 2004, the State Port Authority at Gulfport had \$31,859,000 in general obligation bond balances. By the end of fiscal year 2007, the bonded indebtedness had been reduced to \$28,545,000. Total debt service for that year was \$3,134,589. The State of Mississippi, through MDA and the Mississippi Department of Transportation (MDOT) has also provided loans and grants to the Port of Gulfport as well as to the other commercial ports.

81. In 1998, MDOT commissioned the consulting firm of Parson, Brinckerhoff, Quade, and Douglas to conduct a study of the capabilities of Mississippi's 15 public ports and develop a strategy for expansion and development. The study recommended \$65 million for critical capital infrastructure development for all public ports from calendar year 2000 through 2005. Mississippi spent just \$26 million on the recommended expenditures during those years.

82. In 2002, the MSPA commissioned several private consulting firms, led by the JWD Group, to create a "Master Plan" for the Port (the "2003 Master Plan"). The 2003 Master Plan spoke of a "Twenty-year Vision Plan," included a new truck road, the relocation of Highway US 90, a "total of four gaming facilities including support areas with hotels, parking, etc., a total of two cruise terminals and berth," and expanded East and West piers with landfill.

83. The 2003 Master Plan contemplated development to proceed in stages over a 20-year period. It also assessed certain environmental and economic impacts of the projected expansion, but did not address how MSPA would fund the project.

84. At the beginning of the 2007 fiscal year, the Port had \$81,756,822 in unencumbered cash. For fiscal year 2007, the Port's total expenditures -- including operations,

contractual services, capital outlays and bond principal and interest payments -- equaled \$28,165,728. These expenditures were paid for through port operations (both maritime and non-maritime), ad valorem tax payments from Harrison County, interest on excess revenues and insurance and grants.

85. Because the Port's revenues exceed its expenditures, the Port began fiscal year 2008 with an \$82,353,592 unencumbered cash balance. In fact, according to a May 22, 2008 press report, even without any of the \$570 million that HUD has approved to be allocated for "port restoration," Port officials say they've "managed to rebuild 400,000 of the 700,000 square feet of covered storage space Hurricane Katrina destroyed."

86. About a month after Katrina, the MSPA commissioned the JWD Group to create an update of the 2003 Master Plan. This later iteration was entitled "Gulfport Master Plan Update 2007, Mississippi State Port Authority," (the "2007 Master Plan"); the MSPA adopted the updated master plan in June 2007.

87. In the wake of the storm, the 2007 Master Plan noted an opportunity to advance the goals of the pre-Katrina 2003 Master Plan: "Although the storm damaged much of the existing port facilities, it also accelerated redevelopment of port areas and opened new opportunities for growth of the maritime and gaming markets."

88. While the 2007 Master Plan adopted much of the 2003 Master Plan, it accelerated the long-term plan from a 20-year period, down to 5-year and 10-year "Vision Plans."

89. The new 10-year plan included not just repairing damage caused by the hurricane, but also a major expansion of the Port, including creation of a water access, landforms, wharf construction, an "in-land" port to serve as a rail yard, a distribution center, and other projects included in the previous plan. And the relocation of the facilities was intended to permit the

development of a condominium and casino complex and to create a “village” concept, complete with boutiques and retail establishments.

90. This planned 2003 expansion, which was conceived two years before Hurricane Katrina, called for the single largest expenditure of taxpayer funds on any state enterprise in the history of Mississippi. The amount is more than ten times that necessary to pay for hurricane-related damages -- costs which are already largely covered by insurance and other sources. The initial plan entailed not only an expansion of the commercial port facilities, but also provided the infrastructure for a luxury condominium and casino development to be known as the “Village at Gulfport.”

VII. MDA’s 2007 Submitted Restoration Plan For the Port of Gulfport Fails To Certify And Demonstrate That the Proposed Use of Emergency CDBG Funds Will Comply With CDBG’s Compulsory Mandates.

91. On September 7, 2007 the MDA published an Action Plan for the “Port of Gulfport Restoration Program.” The total amount proposed for this program, including administrative costs, was an amount not to exceed \$600 million, and because Mississippi had no remaining CDBG funds, this funding was to be accomplished by “redirecting \$600 million of the \$2.15 billion allocated for Phase I of the Homeownership Assistance Program to the Port of Gulfport Restoration Program.”

92. On December 12, 2007, MDA submitted this proposal to HUD. It stated summarily that “[t]he restoration of the Port is crucial to the economy and long-term recovery of the State of Mississippi and to the Gulf Coast region in particular.” The submitted port restoration plan is attached as Exhibit 2.

93. In the submitted port restoration plan, Mississippi described sample projects such as the inland port program, wharf construction, and development of the East and West piers -- all

projects that mirror pre-Katrina development plans. Mississippi presented the proposed restoration as a need that arose as a result of the hurricane, even though the funding requested was ten times the amount needed to repair the hurricane-related damage. The State did not reveal the availability of other funding sources with which to restore the Port; and, in its review of the plan, HUD did not require Mississippi to divulge other possible sources of funding.

94. Furthermore, Mississippi did not show in the port plan, nor did HUD require the state to show, the expected costs of repairing hurricane-related storm damage to the then existing Port facility.

95. Contrary to MDA's statements, the requested \$600 million was not intended merely to repair hurricane related damage. The Mississippi Legislature's Joint Committee Performance Evaluation and Expenditure Review, dated June 20, 2006 ("PEER Report"), makes it clear that the damage to, and even the value of, the Port of Gulfport, is only a fraction of the amount that MDA asked to be diverted from Phase I. According to this report, a January 31, 2006 assessment of the Port found damage from the hurricane to be only \$50.576 million and the assessed value of the Port to be \$127.5 million.

96. The submitted port restoration plan mirrored many of the MDA's earlier submitted action plans, including the Phase I Plan to which the port restoration plan is an amendment, in that it did not propose or provide for housing, or any other type of assistance that would be targeted to LMI residents. Yet, unlike the prior economic development submissions, the MDA did not request a waiver of the LMI benefit requirement when it submitted the port restoration plan.

97. The port restoration proposal contained no plausible evidence that the 50% LMI benefit requirement could be met. It did, however, acknowledge that, pre-Katrina, only 10% of

the direct maritime jobs at the Port of Gulfport were held by individuals of low-to-moderate income, and that in 2007 that figure was only 11%.

98. There was no explanation in the port restoration plan for how the state will accomplish a fivefold increase in the number of low and moderate wage workers helped by the proposal. Nor was there any evidence in the plan that any of the contemplated new jobs at the redeveloped and expanded port would be low skill. The proposal did not identify any plan to seek, train and hire low wage workers for the more highly skilled jobs available at the port facility.

VIII. The MDA's Proposal To Divert Over A Half Billion Dollars To Fund Its Pre-Katrina Plan To Expand A Commercial Port Met Substantial Opposition Because Additional CDBG Funds Were Desperately Needed To Address Mississippi's Persisting Unmet Affordable Housing Needs.

99. When the MDA submitted the port restoration plan to HUD, it was readily apparent that the housing crisis on the Gulf Coast was still dire. For example, in October 2007, FEMA reported that, out of nearly 86,000 rental and homeownership units with moderate to severe damage, the HUD-approved Mississippi CDBG programs would only rebuild 35,000 units, which is only 40% of those damaged. Furthermore, only 7,000 of 26,000 rental units with moderate to severe damage were slated for repair or replacement, and up to 34,000 families whose homes had wind damage classified as moderate to severe were ineligible for Mississippi emergency CDBG grant monies.

100. Therefore, the proposal to divert \$600 million away from remaining housing needs and toward expansion of an existing commercial facility deviates from the primary purpose of the emergency appropriation -- "to be used toward meeting unmet housing needs in areas of concentrated distress," as stated in the February 13, 2006 Notice.

101. In addition to significant opposition at the local level, members of Congress advocated against HUD's approval of the port restoration plan. On October 17, 2007, Representatives Barney Frank, Chair of the House Appropriations Committee, which has oversight of HUD, and Maxine Waters, Chair of the Subcommittee on Housing and Community Opportunity, which has oversight of the CDBG program, urged then HUD Secretary Alphonso Jackson "to deny the [MDA's] . . . proposal to reprogram \$600 million of housing recovery funds for the restoration and expansion of the Port of Gulfport." As Representatives Frank and Waters stated, the Port Plan "disregards the continued need for available housing in Mississippi."

102. Representatives Frank and Waters wrote again on January 23, 2008, after the revised proposal had been submitted to HUD on December 12, 2007, to "urge [Secretary Jackson] to reject Mississippi's . . . proposal to divert \$600 million in [CDBG] funds away from hurricane housing efforts in order to expand the Port of Gulfport." They wrote, "We strongly believe that approving this diversion is a mistake and would violate the intended purpose of these CDBG funds to benefit the Gulf Coast's low and moderate income families."

103. There was significant media and public opposition as well. In particular, a concern was raised regarding the fact that no waiver of the statute's 50% LMI requirement had been sought, and that the MDA's required "certifications" regarding fair housing and the LMI benefit requirement were absent or inadequate under HUD's own regulations. The public criticism of and comment concerning the port restoration plan also provided HUD with an extensive overview of Katrina's adverse impact on minority households, the significant remaining unmet needs of LMI and minority households, the failure of MDA to provide adequate housing assistance for LMI and minority persons, and the adverse environmental impact of the inland port proposal on an 80-90% African-American community.

IX. In Disregard of Its Own Regulations, and Substantial Opposition, HUD Approved The Port Restoration Plan.

104. On January 25, 2008, then HUD Secretary Jackson wrote a letter to Mississippi Governor Barbour, stating that the Port Proposal has been “reviewed for completeness with the purposes of the Cranston-Gonzales Affordable Housing Act (NAHA) 42 U.S.C. 12708,” and “HUD’s *acceptance* of this amendment is in keeping with the nature of the disaster recovery supplemental [CDBG] program for the hurricane-ravaged Gulf Coast.” A copy of the letter is attached as Exhibit 3. The Secretary went on to say in the letter that the “Congressional language associated with these CDBG funds allows me little discretion, and, therefore, the [MDA] may reprogram the \$600 million originally intended for the Homeowners Assistance Program to be used for the Port Restoration Program.”

105. In the letter, Secretary Jackson expressly acknowledged the impropriety of the port proposal, stating that “I remain concerned that this expansion does indeed divert emergency federal funding from other more pressing recovery needs, most notably affordable housing.”

106. Secretary Jackson also wrote that he was “pleased to learn that just this week you announced an additional \$100 million to be reprogrammed to address the critical housing needs of low- and moderate-income households in the Gulf Region of Mississippi.” Secretary Jackson was misled. The \$100 million that the State programmed for workforce housing to help win HUD approval for the port restoration plan was diverted from another program that targeted low-to-moderate income households -- the Phase II Homeowner Assistance Grant Program. In other words, the net loss of emergency CDBG funds that could be used to help poor people still without housing remained at \$600 million.

107. At a hearing held on March 11, 2008, before the House Appropriations Committee, which followed HUD’s “acceptance” of the MDA’s redirection of the \$600 million,

numerous Representatives, and even Secretary Jackson himself, expressed doubt about the propriety of the port restoration plan, and HUD's approval of it.

108. At the March 11th hearing, Chairman Frank stated that:

we want to make it very clear that *this is not what CDBG was meant to do*, and we don't want to set the precedent that this is an appropriate use of Community Development Block Grant funds. We would have liked to have the waiver actually document what did and didn't happen. And I think, even by their own admission, the percentages of 50 percent for low- and moderate-income people, 51 percent of the jobs for low-and moderate-income people, that Mississippi didn't comply with that.

109. Representative Michael Capuano specifically engaged Secretary Jackson about the Secretary's claim to have "little discretion" but to approve the MDA's port proposal, and Secretary Jackson conceded that he was unsatisfied with the proposal, and believed that the funds should be targeted to the LMI residents' unmet housing needs:

Rep. Capuano: [T]he letter to the Governor of Mississippi was troubling to me. . . . When you say that you have little discretion -- in your letter, you said you have little discretion -- does that mean no discretion? Or does that mean little discretion?

Alphonso Jackson: I think the legislation was very clear. It said 'we shall.' It didn't say, 'we may.'

Rep. Capuano: So that you don't have little discretion. You have no discretion?

Alphonso Jackson: Basically, no discretion.

Rep. Capuano: All right. Because 'little discretion' troubles me, because I always argue with people that when you have a little discretion, use it. And especially when you go on to say you're concerned that there may be significant unmet needs of affordable housing, which I agree with, but I'd like to know what is it that you think that is unmet in the region?

Alphonso Jackson: *Well, I don't think that everything has been provided to low- and moderate-income people that should be provided for housing or infrastructure. So I totally agree with you. But had I had my d'ruthers, I probably would have said, sir, I don't think we should be using this money and I would not approve it. But I didn't have that kind of authority.* (italicization added).

110. On March 26, 2008, HUD responded in writing to some of the public opposition to the port restoration plan. While the letter did not address the MDA's failure to provide the required certification and supporting evidence concerning CDBG's fair housing mandate, it acknowledged that HUD was concerned that the now "accepted" port proposal would not meet CDBG's 50% LMI benefit requirement, and, thus, ran afoul of HUD's own regulations. Specifically, the letter stated that HUD would "monitor MDA to ascertain that 51 percent of the jobs created or retained by the port are held by or made available to low-to-moderate income workers." In the letter, HUD also acknowledged that Mississippi's "last quarterly program report to HUD reported that only 25 percent of the homeowners assisted in Phase I were low-to-moderate income." Thus, HUD acknowledged its awareness of Mississippi's past failings to comply with the CDBG statute's mandates, and its own regulations, but did nothing to remedy this violation of the appropriation.

111. On June 16, 2008, twelve members of Congress again expressed their opposition to the diversion of \$600 million from housing programs to the port expansion. In a letter to the Co-Chairmen of the House Appropriations Committee for HUD, they sought to prohibit any funds from the 2009 budget being used for this expansion, stating that:

[t]his transfer is unreasonable in light of the fact that the State has not met all of its unmet housing needs. Although the State maintains that it has met its unmet housing needs, housing advocates on the ground in Mississippi contend that the State is cherry-picking numbers that are favorable to its plans. . . . Regardless of

the controversy behind quantifying the need, the State has made decisions in designing its housing programs that leave renters and low-income families out in the cold. First, the State has only devoted 55 percent of its CDBG funds for direct housing recovery programs. Second, the State has frequently sought and received waivers of the low-and-moderate-income requirement for CDBG funds. Third, the State explicitly excluded wind damage from its homeowner assistance grant program, effectively closing the door for much needed recovery funds on hundreds of thousands low-income households. Fourth, the State has focused almost exclusively on owner occupied housing, only dedicating 33 percent of funds to rental housing programs.² Finally, as a result of the waivers, the over reliance on owner-occupied housing, and the exclusion of wind damage, there are questions as to whether or not the State's housing plan affirmatively furthered fair housing.

X. MDA's 2008 Submitted Amendment to the Restoration Plan For the Port of Gulfport Fails To Certify And Demonstrate That The Proposed Use of Emergency CDBG Funds Will Comply With CDBG's Compulsory Mandates.

112. On September 12, 2008, MDA and the State Port at Gulfport unveiled a new port expansion concept, dubbed the "Port of the Future." This plan proposed to create an artificial U-shaped island in the Mississippi Sound built to a 25-foot elevation above mean sea level, connected to shore by a causeway. Although this plan abandoned earlier proposals for a recreational village containing condominiums and casinos, the cost of the "Port of the Future" remained at or above the amount originally requested in the September 2007 Action Plan. A copy of the conceptual plan is attached hereto as Exhibit 4.

113. On October 27, 2008, three days after the State Port Authority voted to approve the new port expansion concept, MDA published on its website a Modification to the Action Plan for the Restoration of the State Port at Gulfport. MDA provided for a comment period until November 10, 2008. The modification did not contain any of the certifications required pursuant to CDBG regulations. MDA submitted the Modification to HUD on November 18, 2008 and HUD accepted the plan on November 21, 2008.

² In fact, this percentage is too high. Only 6.6% of CDBG funds were allocated to rental housing at the time of the port proposal. Since then that percentage has increased only to 13.5% with the addition of \$350 million of new CDBG funding for the Long-Term Workforce Housing Program.

XI. The MDA's Failure To Provide A Satisfactory Certification That The Port Plan Would Affirmatively Further Fair Housing, Standing Alone, Should Have Compelled HUD's Rejection of the Proposal.

114. There is a non-waivable threshold requirement for any jurisdiction seeking CDBG funding that it must certify that it will affirmatively further fair housing. Nothing in the hurricane emergency appropriations, P.L. 109-148, affects this requirement. In fact, Congress specified in P.L. 109-148 that the threshold requirement must be met even though it had lowered the percentage of the grant that had to be spent on low-to-moderate income households.

115. Although MDA submitted ten final partial plan proposals to HUD, only three included certifications that it would affirmatively further fair housing: (1) Phase I of the Homeowners' Assistance Program on March 31, 2006; (2) the third partial plan for Regional Infrastructure on April 24, 2007; and, (3) the Long-Term Workforce Housing Program on April 22, 2008.

116. The MDA failed to make *any* fair housing certifications for the program at issue here, the Port of Gulfport Restoration, either in the original 2007 proposal or the 2008 amendment. Nevertheless, HUD approved both proposals without even questioning the MDA about this failure.

117. The lack of any fair housing certification was specifically noted in a September 24, 2007 comment letter to HUD/MDA concerning the port proposal, which noted that Mississippi "does not even include their standard fair housing language in this proposal. In sum, as proposal after proposal has been made by the State, it has become more and more clear that large numbers of low- and moderate income persons, who are disproportionately minority and persons with disabilities, have been displaced because of the loss of housing stock in the storm –

and by rent increases which have priced many out of the market since. The failure to address this indicates a violation of the Fair Housing Act.”

118. MDA also failed to make any such certification for the remaining non-housing programs related to Economic Development and Community Revitalization, two of the three Infrastructure proposals, the Ratepayer and Windpool Mitigation program and the Hancock County program. HUD approved each of these without even questioning the MDA.

119. In three of the partial action plan proposals, MDA did include a fair housing certification. For example, the Phase I Plan stated that the

State has a current Analysis of Impediments (AI) to Fair Housing, which was submitted to HUD in July 2004. Many of the identified impediments have been or will be addressed during the annual application and implementation workshops for the HOME and CDBG programs. The State will request an update of the AI to include any possible impact caused by Hurricane Katrina. The State certifies that it will affirmatively further fair housing through conducting and implementing the AI and that it will maintain records reflecting the analysis and actions taken.

120. Despite MDA’s and the HUD Secretary’s continuing failure to address public concern about Mississippi’s neglect of CDBG’s fair housing mandate, HUD’s Office of Fair Housing and Equal Opportunity (FHEO) raised serious fair housing concerns with respect to at least two of Mississippi’s waiver submissions. A June 13, 2007 FHEO memo concerning a waiver application, stated that:

FHEO reviewed Mississippi’s waiver request of the 50% rule for low-moderate income beneficiaries in order to extend water and sewer services to certain designated areas. FHEO *again* suggests, as we did in 2006, that as an alternative requirement, the State of Mississippi use the CDBG funds for the compelling needs of the homeless, special needs, and low income populations as a first priority. That recommendation still has not been fully addressed.

FHEO realizes that the need to speed recovery due to the storm damage is important. In light of the known disparities in the homeownership rates between whites and minority groups, particularly African-Americans and Hispanics, and the neglect of resources directed to members of the protected class, the waivers

could result in a violation of HUD's civil rights requirements. Given the correlation between income and race in the Katrina effected areas, failure to follow the alternative requirement could result in noncompliance with civil rights and fair housing laws which under Public Law 109-148 cannot be waived.

121. Despite these concerns, and despite the failure of MDA to certify that the proposal would affirmatively further fair housing for most of its partial plans, including most importantly, the proposals for the Port of Gulfport expansion, HUD approved all of MDA's submitted action plans.

122. The two other fair housing certifications are found in the Regional Infrastructure proposal of April 24, 2007 and the Long-Term Workforce Housing proposal of April 22, 2008, where it stated that:

[t]he State has a current Analysis of Impediments (AI) to Fair Housing, which was submitted to HUD in July 2004. Many of the identified impediments have been or will be addressed during the annual application and implementation workshops for the HOME and CDBG programs. The State has prepared an update of the AI to include any possible impact caused by Hurricane Katrina that has been submitted to the HUD local office for review.

and

[t]he State has a current Analysis of Impediments (AI) to Fair Housing, which was submitted to HUD in July 2004. This study has been updated to include impacts caused by Hurricane Katrina in the lower six counties. Many of the identified impediments have been or will be addressed in Housing Action Plans. An action plan addressing each of the impediments has been forwarded to HUD for approval.

123. On information and belief, HUD did not accept the 2007 AI noted in these plans. It required the State to formulate a new AI in 2008 and in September a contracting organization held hearings on a newly proposed AI.

124. HUD just recently received the completed AI from the MDA but has not yet completed its review nor approved it. The newly proposed AI still lacks any analysis of the impact of the hurricane on fair housing.

125. In summary, HUD has approved the port restoration proposal for the Port of Gulfport, and almost every other MDA proposal, even though they did not include fair housing certifications. For the three plans that did have such a certification, there is still no HUD-approved AI over three years after the hurricane. And no evidence exists that the recently completed AI is adequate, thus indicating that even the three fair housing certifications made are neither “satisfactory” nor supported by factual evidence.

126. The MDA’s partial action plans fall short of affirmatively furthering fair housing. In fact, in many situations, the opposite is the case. With respect to the Port of Gulfport restoration program, the plan is an impediment to fair housing. This proposal diverts \$600 million from an existing housing program, at a time when the HUD Secretary expressly acknowledged a continuing crisis concerning housing. The internal HUD memorandum of June 13, 2007 explicitly recognizes this.

127. The approval of the port restoration plan in face of the evidence of its establishing a major barrier to furthering fair housing continues an accommodation of the MDA’s established pattern of crafting plans that have a disparate, adverse impact on minorities. In the past, for example, the Phase II of the Homeowners’ Assistance Program which was designed to provide assistance to LMI persons, a disproportionate number of whom are minority, limited grants under the program to only two-thirds (\$100,000) of the grants available to Phase I recipients (\$150,000) which was not targeted to LMI and minorities. No justification was offered for this disparity.

128. In sum, the pattern followed by MDA in formulating their partial action plans has been to seek, time after time, waivers of the 50% requirement of the emergency funding statutes so that, in the end, 84% of the total funding is exempted from this requirement, and to ignore the

critical need for affordable rental housing, even though the MDA, FEMA, and HUD, among others, expressly acknowledged, shortly after Katrina, that the hurricane had a disproportionate impact on low income and minority residents.

129. At the time of port proposal, only 6.7% of the funds were allocated to rental housing recovery. Yet, rather than address this extremely disproportionately low and discriminatory allocation of funds to rental housing needs, MDA chose to exacerbate the problem by diverting \$600 million of the emergency funds from a homeowners' assistance program to a program expanding a port that already was substantially repaired and operating. As such, this proposal plainly does not affirmatively further fair housing. Rather, it does the opposite -- increases the discriminatory impact of MDA's partial plans on minority households.

XII. Mississippi's Approved Use of the Emergency CDBG Funds Will Not Meet the State's Affordable Housing Needs For Which the Federal Funds Were Intended.

130. Mississippi's hurricane recovery programs will fail to restore a sufficient quantity of affordable rental housing to meet the post-Katrina need. Single family, and small multifamily (less than 10 unit) rentals accounted for two-thirds (47,103 out of 62,470) of rental units damaged by Hurricane Katrina. A total of 13,798 of small rental units suffered major to severe damage. Mississippi's small rental assistance program is forecast to restore approximately 5,500 units rentable to persons earning 80% of area median income. Over 8,000 small rentals will not be repaired.

131. Mississippi's hurricane recovery programs to restore affordable apartment complex rentals also have major shortages. Multifamily apartment complex housing (more than 20 units) represented one-third (25,457 out of 62,470) of rental units damaged by Hurricane Katrina. A total of 7,081 of these rental units suffered major to severe damage. Mississippi's

Low Income Housing Tax Credit program was forecast to restore 5,500 units but the financial crisis and other forces make it likely that a substantial number are not going to be built. As a result, between 1,500 and 3,800 units with major to severe damage will not be repaired by the LIHTC program. Three years after Hurricane Katrina, the demand by low-income renters for rental units offered at the income levels mandated by LIHTC heavily outstrips the supply.

132. Now, three years after the storm, and nearly three years since the Governor's Report, it is plain that the Gulf Coast housing crisis created by Hurricane Katrina is far from being addressed despite the various governmental agencies' promises and recommendations. Particularly indicative of the continuing crisis is that, as of more than two years after the storm, approximately 15,000 Mississippians still remained in 2,800 FEMA trailers and 2,800 Mississippi Emergency Management Agency Cottages. Most of the FEMA trailers contain have unhealthy levels of formaldehyde.

COUNT I

(DECLARATION OF OBLIGATIONS UNDER 42 U.S.C. §5301 ET SEQ.)

133. The plaintiffs incorporate by reference the allegations stated in Paragraphs 1 through 132.

134. An actual controversy exists over the scope of the Secretary's duty to review and assess, and his discretion to disapprove, a request to divert CDBG funds from an approved program, such as the Phase I housing assistance program, to an unrelated program for which HUD's permission has not yet been sought or given, such as the proposed Port expansion project..

135. The plaintiffs are entitled to a declaratory judgment that the Secretary has a positive, non-waivable statutory and regulatory duty to review and assess Mississippi's proposal

to divert \$600 million in CDBG funds to the Port expansion project, in order (a) to determine whether the proposal contains the requisite certifications of compliance with the Fair Housing Act and the LMI benefit requirement, and (b) to determine whether those certifications are “satisfactory” within the meaning given to that term by the statute and implementing regulations. The plaintiffs are also entitled to a declaratory judgment that the Secretary has a positive, non-waivable statutory and regulatory duty either to approve the proposal as satisfactory or to disapprove it as unsatisfactory, and that the Secretary cannot merely “accept” the proposal on the ground that he has “little discretion” or “no discretion” to approve or disapprove it.

COUNT II

(PROCEDURAL VIOLATION OF 42 U.S.C. §5301 ET SEQ.)

136. The plaintiffs incorporate by reference the allegations stated in Paragraphs 1 through 135.

137. The Secretary had a positive, non-waivable statutory and regulatory duty to review and assess Mississippi’s proposal to divert \$600 million in CDBG funds to the Port expansion project, in order (a) to determine whether the proposal contained the requisite certifications of compliance with the Fair Housing Act and the LMI benefit requirement, and (b) to determine whether those certifications were “satisfactory” within the meaning given to that term by the statute and implementing regulations.

138. The Secretary also had a positive, non-waivable statutory and regulatory duty either to approve Mississippi’s proposal as satisfactory, or to disapprove it as unsatisfactory, based on his review and assessment of the certifications made in that proposal and the likelihood that Mississippi could and would comply with the Fair Housing Act and the LMI benefit requirement in spending \$600 million in federal CDBG funds on the Port expansion project.

139. The Secretary violated his statutory and regulatory duties by purporting to “accept” (rather than approve or disapprove) the Mississippi diversion proposal without performing the requisite review and assessment, on the basis of spurious assertions that the relevant statutes allowed him “little discretion” or “no discretion” in the matter. By doing so, the Secretary unlawfully withheld proper agency action (i.e., assessment, review and approval or disapproval), and acted in a manner that was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law and without observance of procedure required by law.

140. The Secretary’s decision to “accept” the Mississippi diversion proposal was an “agency action” within the meaning of the Administrative Procedure Act, 5 U.S.C. §701(2), and was also “final agency action for which there is no other adequate remedy in a court,” within the meaning of 5 U.S.C. §704.

141. The plaintiffs have suffered legal wrong, and have been adversely affected and aggrieved by the Secretary’s actions, and are therefore entitled to judicial review under the Administrative Procedure Act, 5 U.S.C. §702.

COUNT III

(SUBSTANTIVE VIOLATION OF 42 U.S.C. §5301 ET SEQ.)

142. The plaintiffs incorporate by reference the allegations stated in Paragraphs 1 through 141.

143. Although procedurally deficient for reasons stated, the Secretary’s “acceptance” of the Mississippi diversion proposal operates as a *de facto* approval of that proposal. In fact, until its “acceptance” of the port proposal, HUD was consistently granting “approval” of previous MDA partial plans.

144. Insofar as it operates as a *de facto* approval of the Mississippi diversion proposal, the Secretary's decision violated the Community Development Block Grant statute, and the regulations promulgated thereunder, because the Fair Housing Act and LMI benefit certifications contained in the Mississippi diversion proposal were not, and could not be deemed, "satisfactory" within the meaning of the statute and regulations.

145. With respect to the statutory requirement that a grantee satisfactorily certify that the grant will be conducted and administered in conformity with the Fair Housing Act, and will affirmatively further fair housing, the Mississippi diversion proposal was unsatisfactory as a matter of law because (1) the proposal in fact does not even contain a certification to that effect, (2) as a consequence of the numerous waivers previously granted by HUD to Mississippi with respect to other programs funded by the emergency CDBG grants, only an insubstantial portion of the aggregate grant had previously been allocated for housing that would benefit LMI and minority persons, and (3) the diversion of an additional \$600 million from the Phase I housing assistance program to the Port expansion project -- which by its terms has no housing component at all -- could only have further frustrated the statutory objective of affirmatively furthering fair housing. Indeed, in the letter in which he "accepted" the Mississippi diversion proposal, Secretary Jackson himself said that he "remain[ed] concerned that this expansion does indeed divert emergency federal housing from other more pressing recovery needs, most notably affordable housing" (emphasis added). Based on the Secretary's own stated concerns, therefore, the Mississippi diversion proposal could not possibly have satisfactorily certified compliance with the statutory objective of affirmatively furthering fair housing.

146. With respect to the statutory requirement that a grantee satisfactorily certify that the aggregate use of the grant funds will principally benefit persons of low and moderate income

in a manner that ensures that not less than 50% of the money is used for activities that benefit such persons, the Mississippi diversion proposal was also unsatisfactory as a matter of law. The proposal did make the unsupported assertion that “MDA will qualify this program under the low to moderate national objective and will report such information to HUD.” However, no such information has yet been reported.

147. Moreover, the Mississippi diversion proposal itself contains specific information that refutes the State’s prediction of eventual compliance with what it called the “low to moderate national objective.” A grant-funded activity will be considered to address the statutory objective of benefiting low and moderate income persons only if it meets one or more of four criteria: (1) it qualifies as an “area benefit activity” because it will generally benefit a geographic area in which at least 51% of the residents are low and moderate income persons, (2) it qualifies as a “limited clientele activity” that benefits a specific group of persons (e.g., abused children, battered spouses, elderly or homeless persons), at least 51% of whom are low and moderate income persons, (3) it qualifies as a “housing activity” because it is carried out for the purpose of providing or improving permanent residences that, upon completion, will be occupied by low and moderate income households, or (4) it qualifies as a “job creation or retention” activity because it is designed to create permanent jobs where at least 51% of the jobs involve the employment of low and moderate income persons.

148. The port expansion project cannot and will not meet any of these criteria. The project is self-evidently neither a “limited clientele activity” nor a “housing activity.” It cannot qualify as an “area benefit” because, according to information supplied by Mississippi itself in the diversion proposal, no more than 37% of the population of the six counties that will benefit from the project are persons of low and moderate income. And it cannot qualify as a “job

creation or retention activity” because, again according to information supplied by Mississippi itself in the diversion proposal, only about 10% of the jobs at the Port have historically employed persons of low and moderate income. The State has not announced plan to dramatically alter that pattern, such that at least 51% of the jobs created or retained by the Port expansion project might employ persons of low and moderate income.

149. The Secretary, therefore, could properly have discharged his procedural obligations under the Community Development Block Grant statute only by disapproving the Mississippi diversion proposal for unsatisfactory certifications of compliance with the Fair Housing Act and LMI benefit requirements. The Secretary’s “acceptance” of the proposal, which effectively approved the diversion of \$600 million in CDBG funds to the Port expansion project, was arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law. The Secretary’s decision to “accept” the Mississippi diversion proposal was an “agency action” within the meaning of the Administrative Procedure Act, 5 U.S.C. §701(2), and was also “final agency action for which there is no other adequate remedy in a court,” within the meaning of 5 U.S.C. §704.

150. The plaintiffs have suffered legal wrong, and have been adversely affected and aggrieved by the Secretary’s actions, and are therefore entitled to judicial review under the Administrative Procedure Act, 5 U.S.C. §702.

REQUESTED RELIEF

The plaintiffs ask this Court for the following relief:

1. A declaration that the HUD Secretary had a duty to review and assess Mississippi’s proposal to divert \$600 million in CDBG funds to the Port expansion project, in order (a) to determine whether the proposal contained the requisite certifications of compliance

with the Fair Housing Act and the LMI benefit requirement, and (b) to determine whether those certifications were “satisfactory” within the meaning given to that term by the statute and implementing regulations, and that the HUD Secretary also had a duty either to approve the proposal as satisfactory or to disapprove it as unsatisfactory;

2. A declaration that the HUD Secretary violated his statutory duties when he purported merely to “accept” the Mississippi diversion proposal on the spurious ground that he had “little discretion” or “no discretion” to review and approve or disapprove it;

3. Pursuant to Rule 65 of the Federal Rules of Civil Procedure, entry of preliminary and permanent injunctive prohibiting HUD from releasing or approving the obligation of any of the nearly \$600 million in CDBG funds for the purposes stated in Mississippi’s diversion proposal (that is, for the proposed Port expansion Project); and

4. Such additional relief as the Court deems just and proper.

DEMAND FOR JURY

Plaintiffs demand a trial by jury on all counts so triable.

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