

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL FAIR HOUSING ALLIANCE,
et al.

Plaintiffs,

v.

BEN CARSON, *et al.*,

Defendants.

Civ. Action No. 1:18-CV-1076-BAH

SECOND DECLARATION OF JOHN HENNEBERGER

1. My name is John Henneberger. I am over the age of eighteen and am competent to make this declaration. I have personal knowledge of the matters set forth herein.
2. I am co-director of Texas Low Income Housing Information Service, Inc., also known as Texas Housers. Texas Housers is a Texas non-profit corporation with offices in Austin, Houston, Edinburg and Fort Worth. It is the principal statewide advocacy group focused on expanding housing opportunities for low-income residents of Texas. Since 1988 we have worked across Texas in many different ways to support low-income Texans' efforts to achieve the American dream of a decent, affordable home in a quality neighborhood. We believe that Texas' critical low-income housing and community development needs can best be solved through a public-private partnership led by the initiative of low income Texans and supported by government, the private sector and the general public.
3. Since 2006, Texas Housers has worked on issues relating to residential segregation and access to fair housing choice throughout Texas. In the course of this work, we paid close

attention to the fact that Houston was experiencing increased segregation on the basis of race and national origin as a result of insufficient affordable housing choices available to evacuees moving to Houston after Hurricane Katrina. Texas Housers has also focused a significant part of our work ensuring the fair use of U.S. Department of Housing and Urban Development (“HUD”) disaster recovery funds by the State of Texas, county governments, municipal governments and regional councils of governments. We specifically have worked to ensure these funds are used in a manner that affirmatively furthers fair housing (“AFFH”) and more broadly to ensure that these funds reduce the existing patterns of residential segregation and discrimination across Texas and in various cities of the state.

4. In 2009, Texas Housers and, later, Texas Appleseed, filed a complaint with HUD alleging that Texas state agencies disbursing CDBG-Disaster Recovery funds awarded after Hurricanes Ike and Dolly in 2008 were not affirmatively furthering fair housing in their activities. The state’s then-existing Analysis of Impediments (“AI”) was inadequate to assure that the programs and activities to be funded by the CDBG-Disaster Recovery Program would address outstanding civil rights concerns. Further, we alleged that the AI had to be updated and revised to take into account the effects of the hurricanes, and that state officials and grantees were not familiar with the AFFH process or concepts and needed training and oversight. Finally, we alleged that, if not revised, planned expenditures by the state of HUD funds would have perpetuated segregation across Texas.
5. As a result of advocacy and enforcement claims by Texas Housers and Texas Appleseed, HUD withheld \$1.7 billion in disaster recovery funds from the state of Texas until the

parties entered into a Conciliation Agreement on May 25, 2010 resolving the concerns. That agreement called for the State of Texas to conduct a new Analysis of Impediments, provide training for local and regional governmental recipients on their obligation to AFFH, and set aside funds for specific programs that would affirmatively further fair housing—including replacing public housing units lost as a result of Hurricane Ike in Galveston, Texas and other locations in a manner that affirmatively furthered fair housing, and created a state-wide homeowner mobility program to expand disaster survivor's access to housing opportunities in safer and higher quality neighborhoods. Texas Housers learned through this experience that the AI process alone was completely inadequate to ensure civil rights compliance or reduce residential segregation. We concluded that if fair housing was to be achieved at the local level, there was a need for a much more effective process to assess and produce local fair housing plans that involved both more effective engagement of impacted communities, access to and analysis of better demographic and geographic data, and guidance, training and support concerning the fair housing obligations of HUD fund recipients. In summary, in the course of intense work over a number of years in disaster recovery with state government and dozens of local governmental units both large and small, we came to understand what was required to achieve fair housing: (1) strong oversight and training of local fund recipients by HUD; (2) formal opportunities for involvement by citizens and advocates in the local assessment and analysis of data to support accurate assessment of the nature, causes, and extent of impediments to fair housing and the development of appropriate remedies; and (3) careful consideration of local information and data in the assessment

and remediation strategy to fair housing impediments. In our experience, the existing AI process failed to achieve each of these things.

6. Following the settlement of our HUD complaint, Texas Housers along with Texas Appleseed responded to resistance from local communities that refused to comply with the provisions of the Conciliation Agreement, including the Beaumont, Texas public housing agency which ultimately refused to replace apartments damaged by Hurricane Dolly in higher opportunity areas, and in Houston and Galveston, Texas where local officials vigorously fought and blocked the replacement of public housing apartments destroyed by Hurricane Ike in a manner that Affirmatively Furthered Fair Housing. Texas Housers and Texas Appleseed also challenged the Houston Analysis of Impediments in 2011, based on its failure to identify and address extensive patterns of residential segregation based on race and national origin and its failure to propose effective actions to address such segregation.
7. Having worked extensively with the AI process in Texas and having experienced and endeavored to mitigate its substantial shortcomings, Texas Housers supported HUD's new AFFH Rule and the new AFH process, including the AFH tool, by submitting comments and recommendations to HUD through its notice and rule making process. We supported the rule's improvements in the AI process, including the provision of a tool to guide jurisdictions through that process, the requirement for specific, concrete actions and government oversight to address local failures we observed that prevented the objective of AFFH. Since HUD promulgated the AFFH Rule in July 2015, Texas Housers has worked with local stakeholders in Austin, Dallas, with the Hidalgo County Regional Consortium, and in Corpus Christi, Amarillo, Houston, Lubbock and Fort

Worth in an effort to develop AFHs that would address local inequities in access to housing, address patterns of residential segregation and make improvements in the quality of housing and neighborhoods for low income people of color in those places. In Fort Worth, Texas Housers spent at least \$7,000 in staff time and out-of-pocket resources researching and assessing impediments to fair housing and building community support for the AFH; in Amarillo and Lubbock, at least \$13,000 and in Hidalgo County, at least \$40,000. We hired researchers, consultants and contractors to develop information and policy solutions around locally specific fair housing issues that could be addressed through the AFH process. We organized and conducted many small and large community meetings and supported and trained local residents on the requirements of the AFH rules and how to participate in the process of assessing fair housing issues and developing proposed solutions. In undertaking these activities, we redirected resources that could have been spent on other projects including Disaster Recovery housing and infrastructure needs in the aftermath of Hurricane Harvey.

8. Work regarding the AFH developed by a consortium of local governmental units in Hidalgo County, Texas illustrates the value of the 2015 HUD AFFH rule and the Assessment process. The Hidalgo County Consortium was a group of public agencies responsible for one of the first AFHs due to be submitted under the AFFH Rule. Six of our staff gathered, analyzed and provided the public and the consortium extensive geographic data on housing and infrastructure problems in the region. We conducted interviews with academics, housing providers and other subject matter experts. We conducted bilingual community educational forums about housing, infrastructure and fair housing in the county. We contracted a professional writer and a videographer to produce

easily understandable materials explaining the origins, nature and solutions to existing impediments to fair housing in the region. Working in conjunction with nonprofit organizations in the county, our staff undertook outreach to low-income persons of Hispanic origin in Hidalgo County of a survey about opinions and experiences with residential segregation and fair housing problems. We and our nonprofit organization partners engaged in distribution, collection and submission to the Hidalgo County Consortium of hundreds of these surveys. With Texas Appleseed, we sent a detailed comment letter on the community participation process the Hidalgo County Consortium proposed to use in its AFH process. That letter put the consortium on notice that the AFFH Rule required it to use broad based communication techniques, to provide materials and outreach in Spanish because of a high population of Spanish language speakers in the county, to reach persons living in *colonias* and other stakeholders for input on specific issues identified in the AFH tool. Without those regulatory requirements, the consortium would have had significantly limited public participation in the AFH process. Texas Housers and Texas Appleseed had to rely on the HUD regulation again after we submitted over 50 pages of written comments and the Hidalgo County Consortium failed to comply with specific requirements in the AFFH Rule to summarize comments received on the draft AFH and indicate which comments it was accepting, or, if not accepting specific comments, why the comments were not accepted.

9. In Hidalgo County alone Texas Housers spent at least \$40,000 in staff time, contractors, resources and materials working with local community leaders to discuss and frame issues, travel to and attend a number of meetings with government officials, collect resident surveys and host community forums on fair housing and segregation attended by

more than 100 local community members in support of the Hidalgo County Consortium AFH process. For more than six months, Texas Housers focused most of its work in the Rio Grande Valley around this single AFH in order to create a model for a local AFH plan that would identify and propose effective local governmental actions that affirmatively furthered fair housing. It was our specific objective to support the development of this AFH in order to demonstrate how a regional consortium could use the AFH tool effectively to achieve compliance with the Fair Housing Act..

10. Following analysis of the consortium's resulting AFH, Texas Housers petitioned HUD through a 15-page letter dated November 13, 2017, not to accept the Hidalgo County Consortium AFH because, as our letter detailed, it failed to identify and address issues required under the AFFH Rule and Assessment process. A second letter sent to HUD on November 20, 2017 also pointed out that the AFH should not be accepted because the Hidalgo County Consortium did not comply with requirements in the AFFH rule related to community participation. Specifically, the AFH completely failed to document whether the Consortium considered and accepted or rejected any of Texas Housers' comments or the comments submitted by local nonprofits representing large numbers of low-income persons of Hispanic origin living in Hidalgo County. While the guidance provided by HUD for developing an AFH was clear and explicit regarding both the process of receiving and responding to public comments and in considering and analyzing data and proposing activities to mitigate impediments, the Hidalgo County Consortium simply failed to follow that guidance. In essence, the Hidalgo County Consortium AFH had the same problems that prior AIs had, either because the

consortium disregarded the clear HUD guidance or believed that HUD would not enforce the requirements of the AFH rule.

11. On December 12, 2017, HUD notified the Hidalgo County Consortium participants that it did not accept their AFH and that revisions to the AFH had to be submitted by March 12, 2018.
12. Issuance of HUD's notice suspending the AFH process on January 5, 2018 stopped the clock for the Hidalgo County Consortium to submit an AHF. Along with Texas Appleseed and members of nonprofit groups representing low-income residents of impoverished neighborhoods and colonias, we met with representatives of several of the Hidalgo County Consortium members on May 9, 2018. At the meeting, Consortium members stated that Public Housing Authorities would no longer be participants in the assessment process, that they would not be revising the goals that were the basis of HUD's rejection of the Regional AFH and stated that HUD's rejection of the Hidalgo County Consortium's AFH was based on metrics and criteria that are not required in an AI. Consortium members also stated that they did not believe that the AI requirements were as rigorous as the AFH requirements. They stated they were relying on the HUD Fair Housing Planning Guide, issued in the 1990s. They informed us they found the 1990s era HUD Fair Housing Planning Guide presented confusing and unclear guidance in preparing an AI. They told us they were struggling to quickly produce an AI within the next few weeks to meet a submission deadline for Hidalgo County's HUD entitlement grants. We requested an opportunity to meet with them for one hour sometime over the upcoming two-week period prior to their production of an AI to discuss fair housing impediments and activities that might be included in the AI. After initially agreeing to a

meeting, staff of Hidalgo County charged with developing the AI informed us on May 24 that they did not have time to meet with us to discuss the new AI.

13. Texas Housers has been involved in the development of a number of AIs prior to the issuance of the AFH rule. The majority of the pre-AFH plans (AIs) we have reviewed have yielded inadequate, incomplete and non-compliant assessments of local impediments to fair housing. For example, in response of our complaints of the inadequacy of the City of Houston AI, HUD reviewed the AI and instructed the city to revise the document. The process of revising this AI took many months and was accomplished only after HUD engaged outside consultants who assumed the lead role of producing a compliant AI for the City of Houston. The AFH process generally and the AFH tool specifically permit a far more complete set issues related to fair housing to be analyzed and addressed in a single, more clearly defined unified public process. We found in many instances fair housing related issues required to be assessed in both the AI and the AFH had never been the subject of systemic public review in the past. From interaction with local officials responsible for preparing AIs we have observed these problems were due in part to a lack of clarity in HUD's requirements for an AI and in part from a failure of HUD to review AIs and provide direction to local jurisdictions. In Hidalgo County these previously unconsidered issues included issues at the core of the local obligation to affirmatively further fair housing: housing quality and segregation, inequitable distribution and quality of public facilities, public infrastructure and public services. Under the previous AI process residential land development and use practices, building codes, public information and public participation practices including language access for persons with limited English proficiency and many additional impediments to

fair housing were not considered by local governments with regard to their utilization of HUD funds.

14. Because of HUD's action eliminating the AFH rule and removing the AFH tool, Texas Housers will be required to expend additional resources to secure compliance by HUD recipients in Hidalgo County outside the defined framework of the AFH tool and process. The AFH rule resulted in the multiple HUD-funded jurisdictions in Hidalgo County undertaking a regional AFH planning process that greatly enhances the effectiveness of the assessment process and which makes far more efficient and effective citizen engagement and the work of organizations like Texas Housers. Since HUD's suspension of the AFH rule Hidalgo County officials have indicated that several separate AIs may be produced instead of a single regional document. To illustrate the problems Texas Housers face by elimination of the AFH rule, Texas Housers will need to meet on an ongoing and regular basis with community groups, engage in lengthy and expensive efforts to compel disclosure of records and data by HUD recipients and analyze public records related to governmental expenditures, practices and policies, and convene meetings and information sharing activities to keep local affected persons and organizations involved and informed about each of the many fair housing issues that confront the area. In the absence of a government framework like the AFH tool and a clear process for addressing key issues, Texas Housers and local advocates must work to secure the attention of the multiple local government administrators and elected officials to consider each public policy and practice, conduct our own analysis of each policy and practice independent of the governmental agencies, develop solutions on our own, outside of a dialogue with local officials who have knowledge and expertise regarding these policies and practices,

advocate for change, educate the public, secure and appear at public hearings, and press local government officials to address fair housing issues individually and serially. Our independent analysis of fair housing issues is largely frustrated with the elimination of the AFH tool. This is due in large part to the elimination of the AFH requirement that local governments analyze and make available a range of data in their possession as part of their completion of the AFH tool which facilitates analysis of fair housing issues. One example, which came to light in the course of the development of the Hidalgo County Consortium AFH, is examination of data describing the geographic locations where HUD CDBG grants have been expended over time by the jurisdiction. Without the AFH process and the use of the AFH tool, the efforts of ourselves and others to achieve compliance with the Fair Housing Act necessarily will significantly increase in term of our time and financial resources, frustrating our mission and restricting to a far smaller number of local jurisdictions our ability to support public participation and engagement to secure compliance with the Fair Housing Act.

15. Texas Housers has undertaken a similar process in Fort Worth to that we undertook in Hidalgo County. The City of Fort Worth had an AFH due on January 4, 2018. There, Texas Housers hired an employee, set up an office, and engaged in local discussions with civil rights leaders, community leaders and advocates and had meetings with the city housing and neighborhoods department and local housing authority about the AFH. We attended public meetings and submitted extensive comments on the draft AFH to the City of Fort Worth, because the AFH failed to address important civil rights issues included in HUD's AFH tool. HUD's notice suspending the AFH rule stopped the clock for Fort Worth as well. It now appears that Fort Worth may submit the deficient draft version of

the AFH as an AI. Fort Worth needed HUD to step in and compel compliance with civil rights requirements to accomplish the objectives of AFFH. Instead HUD issued a “never mind” message when it suspended the AFH process in January. Removing HUD review and oversight gave Fort Worth the ability to walk away from hard choices and gave elected officials the freedom to continue to use their discretion in the use of HUD funds, unrestrained by considerations of Fair Housing objectives. Texas Housers will confront the same problems in advancing fair housing in Fort Worth that it will confront in the Hidalgo County area. Each fair housing related issue will have to be addressed individually and serially, with corresponding greater resource expenditure for less mission advancement. Unless the AFFH rule is reinstated and HUD is actively and effectively engaged in reviewing AFHs with acceptance tied to funding approval, governmental jurisdictions will know that there is no accountability to AFFH. With dozens and dozens of HUD funding recipients in Texas planning and expending hundreds of millions of federal grants each year, neither we nor other private organizations and citizen groups can possibly secure compliance with Fair Housing in the absence of HUD’s efforts.

16. In the City of Corpus Christi, which also had an AFH due on January 4, 2018, Texas Housers conducted extensive research, consulted with local citizens and advocates, encouraged HUD to offer the City technical assistance and an extension of time to incorporate changes based on the devastating impact of Hurricane Harvey on the city and surrounding region, and submitted comments on the AFH. The City declined the extension and submitted an AFH that barely acknowledged massive housing loss, extended displacement, and infrastructure impacts caused by Hurricane Harvey just a few

months earlier. Because HUD suspended the AFH process, it will not review that defective AFH and the City will have no obligation to identify or address the clear fair housing issues that should be part of its disaster recovery. As a result, Texas Housers will have to expend considerable resources trying to make fair housing a reality in Corpus Christi, including monitoring the use of hundreds of millions of dollars in federal disaster recovery money that will be flowing to the region to ensure that it is spent in a way that affirmatively furthers fair housing. Texas Housers does not have the resources to be able to monitor such expenditures and certainly not in a city far from its offices. If HUD had continued the AFH process, we reasonably could have expected that HUD would have required a more robust AFH that addressed these issues. A more robust AFH would have made the monitoring process much easier and less resource-intensive and provided better assurance of measurable outcomes that were consistent with civil rights.

17. After HUD published its notice of suspension of the AFH process and the rule, Texas Housers immediately took steps to try to mitigate the harm of HUD's action. We participated in a number of conference calls with national partners to understand the suspension and discuss a unified response. On January 8, 2018, the Texas Housers in collaboration with others provided an on line webinar in response to HUD's notice, found at <https://texashousers.net/2018/01/09/jurisdictions-must-uphold-fair-housing-obligations-despite-delay-of-key-2015-hud-rule/> that urged local jurisdictions to continue to use the AFH template and HUD data to submit AFHs rather than AIs. With Texas Appleseed, we submitted extensive comments to HUD objecting to the suspension of the rule and the AFH process.

<https://www.texasappleseed.org/sites/default/files/TexasAppleseed->

[TexasHousersComments-Suspension-AFH3-6-18.pdf](#). We communicated with, and continue to communicate with, many jurisdictions in Texas urging them to continue to use the AFH tool and process and comply with HUD's regulation. However, many grantees have stopped work on the process. Important momentum has already been lost by grantees and by our own organization. In the absence of the detailed AFH framework and tool, HUD oversight and mandated state and local engagement in the AFH process, most grantees are slowing their work on fair housing and reducing their efforts. Even more important, without federal oversight Texas Housers knows from past experience that state and local governments will reduce or remove attention and oversight of their civil rights obligations. A return to the former AI process will slow efforts to reduce segregation to a standstill in Texas. Texas Housers will be required to use expensive and time-consuming enforcement efforts, rather than the AFFH planning process, to address long standing patterns of segregation and discrimination in Texas cities.

18. We do not believe that the AFH tool has flaws that justify its withdrawal. Certainly, on balance, we have seen more progress in addressing local fair housing issues including segregation with the Assessment process and use of the AFH tool than we ever saw with the AI process.
19. Since HUD's suspension of the AFH process, we have worked actively to counteract HUD's action, and to preserve use of the AFH process across Texas. We would not have had to do any of this if HUD had not suspended its AFH process and withdrawn the AFH tool. The notices HUD published in the Federal Register on May 23, 2018 will make this work even more difficult.

20. If HUD had not withdrawn the AFH tool and effectively suspended the AFH process and required Texas Housers to counteract its effects, Texas Housers would be more deeply engaged in research, data analysis, policy and legal support, and public education concerning various disaster recovery issues, including State and municipal compliance with civil rights obligations associated with affordable housing, community development and federal disaster recovery funding programs and the effectiveness and efficiency of State and municipal programs offering disaster recovery services and supports to low-income families. We have had to limit our work in jurisdictions affected by disaster recovery in an effort to hold together fair housing research, planning and enforcement efforts in jurisdictions around the AFH process.
21. Counteracting the effects of HUD's withdrawal of the AFH tool and effective suspension of the AFH process also limits Texas Housers' ability to engage in outreach and education for low-income families in places like Beaumont, Port Arthur, Galveston and many more where low-income families are disproportionately exposed to environmental hazards that cause persistent health problems, as well as in Amarillo, where Texas Housers had begun to meet with community groups to talk about fair housing problems and develop advocacy strategies, but now must suspend such efforts. Texas Housers has also been required to divert the time of one of its senior researchers away from his annual review of the statewide Low Income Housing Tax Credit program, a review that is essential for ensuring the program's compliance with the Fair Housing Act and other federal civil rights laws.
22. Texas Housers and its allies are continuing to work on AFFH issues in Texas. We are reaching out to the Hidalgo County Consortium, Ft. Worth, and all the other jurisdictions

to try to convince them to continue their engagement on the AFFH issues, and we are continuing to invest resources in educating local groups in Hidalgo County about their rights to equitable stormwater drainage, the need to reform subdivision rules, and the rights of non-English speakers to receive information about public programs in a language and format they can understand and the other issues they previously raised in the AFH process. There is no longer a structure or a process that provides a specific forum for articulating these pressing community concerns, or a tool that forces jurisdictions to address specific questions and issues in a manner we have described elsewhere in the declaration. Without the focused AFH process or the AFH tool that provides the vehicle to raise these local issues and require the jurisdiction to listen to and address them, these efforts are much more ineffective and diffuse, and the results are greatly reduced, and often less concrete and tangible.

23. Segregation, disparities and inequities still exist across Texas and there is little hope that any of the jurisdictions, or the state, will pay attention to the AFH process or the rule's provisions, because HUD has signaled through its withdrawal of the AFH tool and effective suspension of the AFH process that they don't have to do so.
24. Without the AFH process, the AFH tool and the AFH rule's provisions there is effectively no way to require a local government to focus attention on housing discrimination and segregation issues. Texas Housers understands the depth of local resistance to remedying long-standing civil rights violations in Texas communities and the harm that these civil rights violations inflict on residents who are people of color and who are poor. The AFH tool and the maps and data that HUD provided for the AFH process gave an organized structure and basis for a meaningful local planning process,

but now we feel that we cannot secure a forum for a substantive conversation with a jurisdiction. Inequities in access to community benefits, poor quality infrastructure, lack of investment, lack of decent and affordable housing, and all the other disparities that adversely affect people of color and people who are poor cannot now be effectively addressed with any hope for real and long-lasting compliance with the Fair Housing Act..

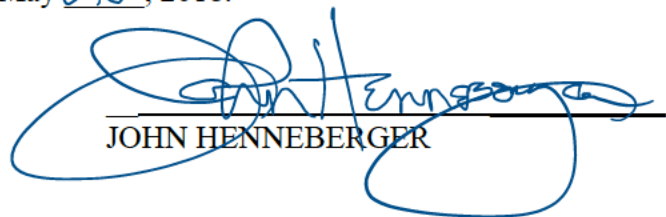
25. Our experience has taught us that when confronting government-created and government-sanctioned residential segregation and discrimination that has been a part of local practices for generations, education and information alone does not accomplish significant or long-lasting compliance with the law. Imposition of a process holding local and state governments accountable to the federal agency that funds them is the effective way to gain compliance. The AFH tool and process provided a structure for the careful examinations necessary to make change. The AFH tool was tailored to make the government responsible for undoing government mandated segregation. HUD's long-term suspension of local governments' obligations to conduct AFHs by withdrawing the AFH tool has terminated or curtailed program participants' examinations of their own respective roles, and those of other actors, in creating and continuing racial and ethnic disparities. The withdrawal of the AFH tool, and the effective suspension of the AFFH rule, have significantly reduced the likelihood that state and local governments will be serious about undoing those patterns.

26. In Texas, having the AFH tool reinstated and the AFH process restored immediately is critical because over five billion dollars in CDBG-Disaster Recovery funds will soon be allocated in the wake of Hurricane Harvey. Without the AFFH Rule and an AFH process, Texas Housers will lack the effective tools to ensure community participation

and the enforcement of the Fair Housing Act to require numerous grantees across the state, and the state itself, to ensure that the disaster funds are spent equitably and in a way that does not perpetuate segregation. Given the number of jurisdictions where Texas Housers is aware of local conditions of inequity, disparity and segregation, our resources will not be adequate to monitor compliance with the AFFH obligation, much less provide the kind of detailed oversight and assistance that we have provided to the State under our previous 2010 fair housing conciliation agreement. Many gains in local education and advocacy, in local knowledge and data collection and analysis, and in local participation in planning the way forward for communities are already being lost because of HUD's abandonment of the AFH tool and the AFFH rule.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and accurate. Further, I certify that I am qualified and authorized to file this declaration.

Executed within the United States on May 28, 2018.


JOHN HENNEBERGER