

**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 MADISON SLOAN**

1. My name is Melissa Madison Sloan. 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 direct the Disaster Recovery and Fair Housing Project at Plaintiff Texas Appleseed (“Texas Appleseed”) which is a non-profit organization based in Austin, Texas. Texas Appleseed works to ensure that all Texas families are able to recover in the wake of a natural disaster, that communities are rebuilt to be more resilient, and that all families have the opportunity to live in safe, decent neighborhoods with equal access to educational and economic opportunity. We believe that local, state, and federal governments must remedy legacies of discrimination in low income communities of color and pave the way for a better, safer future for families living in these communities. Texas Appleseed engages in data-driven research, advocacy and enforcement efforts to uncover inequity in laws and policies and it identifies and seeks solutions for lasting, concrete change.
3. For the past ten years, Texas Appleseed has been actively involved in working for local and state-wide change to address the disparities in access to disaster recovery benefits funded by HUD in communities of color and poverty. Beginning with work in Texas after Hurricanes

Katrina and Rita, Texas Appleseed has focused on the use of disaster recovery funds granted by HUD in a way that affirmatively furthers fair housing and more broadly, on using the AFFH obligation to address patterns of segregation and discrimination that occur across Texas and in various cities in Texas beyond disaster recovery.

4. Beginning in 2009, Texas Appleseed, along with the Texas Low Income Housing Information Service organization (“Texas Housers”), learned from direct experience about the problems with the former Analysis of Impediments process. We discovered, in the wake of Hurricanes Ike and Dolly, that the Texas Analysis of Impediments to Fair Housing Choice (“AI”) was wholly inadequate because the State failed to identify or analyze race-based impediments to fair housing choice, failed to identify or address segregation based on race or national origin, and lacked even rudimentary provisions to ensure that entities that received Community Development Block Grant (CDBG) funds from the state affirmatively furthered fair housing with those funds. In order to get the state of Texas to address our concerns, we, along with Texas Housers, filed a discrimination complaint with HUD. As a result of our advocacy and enforcement claims, 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 and submit it to HUD for approval, provide training for subgrantees about the obligation to AFFH, and set funds aside 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, and creating a state-wide homeowner mobility program to increase access to housing opportunities.

5. Texas Appleseed worked directly with the State and local jurisdictions to help them identify and address potential AFFH issues. In order to do so we had to work with Texas Housers to create processes to assess jurisdictions' AFFH compliance and evaluate proposed disaster recovery spending for AFFH compliance because local AIs were generally inadequate and there were no existing assessment processes that could help make these determinations. This was, and is, particularly true related to assessing the AFFH impacts of infrastructure, public services, and other non-housing investments that were specifically included in the AFH tool.
6. Because of the need for Texas to understand and monitor the efforts of its grantees to affirmatively further fair housing consistent with the revised AIs, Texas Appleseed and Texas Housers worked with the State of Texas and regional subgrantees to develop a form, called the Fair Housing Activity Statement-Texas (FHAAT) designed for local jurisdictions to report actions over the years 2011, 2012, and 2013 that they had taken to address various impediments identified in the AIs developed for disaster recovery funding in Texas. Texas Appleseed and Texas Housers developed this form because HUD had no equivalent mechanism to engage local jurisdictions in actions required by a state AI and had issued no guidance about monitoring local fair housing actions to assure consistency with the AFFH.
7. Texas Appleseed learned through this experience that the AI process alone was completely inadequate to ensure civil rights compliance and that there was a need for very specific steps to be taken to ensure that funds were used to affirmatively further fair housing. We also learned, along with our colleagues Texas Housers, that three elements were critical to ensuring that AFFH obligations were met: (1) strong guidance and oversight by Federal and state agencies; (2) prolonged and informed involvement by local advocates; and (3) careful consideration of local information and data.

8. Through the FFAST process and a subsequent evaluation, we also learned that local jurisdictions were willing to carry out their AFFH obligations, but struggled to understand how to do so because they were not getting enough guidance or technical assistance from HUD and the state, and they had either no or inadequate tools to guide them through the process of identifying barriers to fair housing choice and choosing actions with which to address those barriers.
9. In 2011, we joined with Texas Housers to outline numerous problems with the City of Houston's AI and request that HUD review it. HUD's review found that the City of Houston's AI was incomplete and unacceptable for a number of reasons including its failure to identify and address patterns of segregation based on race and national origin, its failure to address access to housing and opportunity for persons with disabilities, and its failure to contain actions to address the impediments that were identified and maintain records that would document the actions taken. These were all issues that the City would have been required to assess and evaluate using HUD's Assessment process and the AFH tool.
10. Specifically, HUD's November 30, 2011 letter finding Houston's AI incomplete cited the City's failure to include or assess racial segregation, which is specifically required by the AFH tool; the City's failure to analyze barriers for protected classes to housing choice outside of areas of minority concentration, which would have been required by the AFH tool and perhaps have averted HUD's 2016 letter of findings that the City of Houston had engaged in intentional discrimination under Title VI of the Civil Rights Act of 1964; and the City's failure to include or analyze other impediments to fair housing choice, including access to public schools, transit access, and lending discrimination, all of which analyses would have been required by the AFH tool. The City of Houston's AI was initially

incomplete and insufficient to support a truthful certification of eligibility for federal funds, because it failed to include and analyze critical data and factors that are not clearly laid out by the FHPG, but would have been included in an assessment done using the AFH tool.

11. In 2014, HUD signed a Voluntary Compliance Agreement with the City of Dallas as a result of a complaint filed by another non-profit organization that included specific requirements for updating the City's AI.
12. In all of these cases, seeking HUD's intervention because of an inadequate AI resulted in substantially improved AIs, but in all three cases, a complaint from an outside advocacy group was required to trigger review, resulting in delays substantially longer than the timeline for revision of an AFH under the rule.
13. Texas Appleseed, because we had worked so extensively with the AI process in Texas and experienced and tried to address its failures, supported HUD's AFFH rule and the new AFH process by submitting comments and recommendations to HUD about improvements that were needed. We submitted six sets of comments on the proposed assessment tools that we considered to be central to the AFH process, in addition to collaborating with national fair housing and racial justice organizations to identify potential issues with the tools and suggest solutions.
14. Since implementation of the new rule and the Assessment process, Texas Appleseed has worked in Austin, Dallas, Lewisville, League City, Hidalgo County Regional Consortium, Corpus Christi, Fort Worth and other Texas jurisdictions with Texas Housers and local stakeholders and advocates in an effort to support AFHs that would address various local inequities in access to housing, address patterns of segregation and make lasting changes in the quality of life for low income people of color in those cities. We, along with Texas

Housers, focused attention and resources on those jurisdictions that had early due dates for their AFH.

15. Our work in Hidalgo County, Texas with a Regional Consortium that was preparing a regional AFH is illustrative. At the beginning of the process, Texas Appleseed, along with Texas Housers, sent the lead agency a seven page letter to remind it that the AFFH Rule required changes in the community participation process that Hidalgo County was going to use in its AFH process. Based on the HUD regulation, we authored a letter to Hidalgo County, as one of the first AFH submitters in Texas, of specific requirements relating to use of broad-based communication techniques for outreach and the need to provide materials and outreach in Spanish because of a high population of Spanish speakers in the county and reach persons living in colonias areas and other stakeholders for input on specific issues identified in the AFH tool. Without those regulatory requirements, Hidalgo County would have had significantly limited public participation in the AFH process.
16. We relied on the HUD regulation and the Assessment process requirements and AFH tool again when we submitted, with Texas Housers, over 50 pages of written comments that summarized input provided by the public at public hearings and through other comments and recommendations, asked the Consortium to address identified fair housing issues across the Consortium. We, along with Texas Housers, asked HUD through a 15 page letter dated November 13, 2017 not to accept the Hidalgo AFH because, as the letter detailed, the AFH had ten significant failures in identifying and addressing issues required by the HUD rule and the Assessment process, and detailed in the AFH tool. Among those failures was the failure to examine neighborhood level segregation and disparities in access to opportunity, particularly within cities and *colonias* areas. A second letter we sent to HUD on November

20, 2017 pointed out that the AFH should not be accepted because it was substantially incomplete as defined in the regulation: the Consortium had failed to consider and accept or reject any of the comments we submitted. In essence, the Hidalgo AFH had all of the same problems that prior AIs had, either because Hidalgo County was not attentive to the new requirements, or thought that HUD wouldn't enforce them.

17. By letter dated December 12, 2017, HUD notified the Hidalgo Consortium participants that it did not accept their AFH and that revisions to the AFH had to be submitted by March 12, 2018.
18. Issuance of HUD's notice suspending the AFH process on January 5, 2018 stopped any progress that the Hidalgo Consortium may have been making to improve its AFH and consider local community input. We have discovered that HUD sent the Consortium a letter dated January 24, 2018, advising them of the publication of the Notice, and that they should not submit the revised AFH to HUD, stating "HUD will not review your revised AFH submission and you will not receive a determination that your AFH is accepted, non-accepted, or deemed accepted." The letter also states that program participants, including members of the Consortium are required to comply with requirements that existed prior to August 17, 2015." That date is the effective date of the regulation. This letter effectively tells grantees that none of the requirements of the AFFH rule apply now. The letter was signed by HUD Official Krista Mills, Deputy Assistant Secretary in the Office of Fair Housing and Equal Opportunity.
19. Along with Texas Housers and members of *colonia* organizing groups, we met with representatives of several of the Hidalgo Consortium members on May 9, 2018. At the meeting, Consortium members stated that Public Housing Authorities would no longer be

full 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, that they believed that the rejection letter was issued solely to delay their due date until after the suspension of the AFFH Rule, and that the AFH rejection was based on metrics and criteria that are not required by an AI. Consortium members were clear that they did not believe that the AI requirements were as rigorous as the AFH requirements and stated that they were looking for guidance on how to conduct an AI using the FHPG. The consortium jurisdictions have subsequently cancelled a follow-up meeting with community groups and Texas Plaintiffs scheduled for May 30, 2018. HUD's withdrawal of the AFH places additional barriers in the way of convincing these jurisdictions to conduct a fair housing assessment that complies with their statutory obligation to AFFH.

20. The City of McAllen, a consortium participant, submitted a CAPER that describes its existing AI as "a detailed account of actions and activities that limit access to affordable housing" – ignoring the existence and prevalence of segregation – and reports that the City has taken ineffective actions like enforcing existing zoning codes and fees and declaring April as Fair Housing Month, While Texas Appleseed and Texas Housers did not believe that the AFH that the Hidalgo Consortium initially submitted to HUD was compliant with the AFFH rule and assessment process, it was exponentially better than any previous AI submitted by the Consortium or any of its members because the AFH tool required analysis of data on issues like segregation and discrimination based on national origin that jurisdictions had previously ignored . The Hidalgo Consortium was also able to use the AFH tool and assessment process without hiring additional consultants.



21. Texas Appleseed was also deeply involved in local advocacy around the development of an AFH in the city of Corpus Christi, Texas, which was due on January 4, 2018. Texas Appleseed consulted extensively with local advocates, encouraged HUD to offer the City 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 on January 4, 2018, the day before HUD suspended the AFH process, that barely acknowledged massive housing loss, extended displacement, and infrastructure impacts caused by Hurricane Harvey. Because HUD suspended the AFH process, Texas Appleseed cannot challenge the AFH with HUD or use the AFH process to require that Corpus Christi deal with its serious fair housing issues. HUD will not review the defective AFH and the City will have no obligation to identify or address the clear fair housing issues that are part of its disaster recovery. As a result, Texas Appleseed will have to expend considerable resources trying to make fair housing a reality in Corpus Christi, including participating in monitoring the use of hundreds of millions of dollars in federal disaster relief money that will be flowing to the region to ensure that it is spent in a way that affirmatively furthers fair housing. If HUD had continued the AFH process, Texas Appleseed could reasonably have expected that HUD would have required a more robust AFH that addressed these issues, in part because the AFFH rule specifically cites a Presidentially declared disaster as a material change that requires revision of an AFH. A more robust AFH would have made the monitoring process much easier and less resource-intensive. If and when HUD had accepted an AFH, it would have been in place to hold the City accountable for taking actions to address the fair housing barriers. Without that accountability through the AFH process, we must monitor the use of disaster recovery funds

expenditure by expenditure from across the state, work that we do not have the resources to perform comprehensively.

22. 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.
23. The City of League City, although its first AFH was not due until January 2022, chose to use the AFH assessment process and tool to conduct its 2017 Analysis of Impediments to Fair Housing Choice.
24. Three large Regional AFHs in Texas that are proceeding using the AFH assessment process and tool despite HUD's actions to withdraw the AFH tool and effectively suspend the AFH process.
25. 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.
26. We produced, with Texas Housers, immediately after HUD's action, a video to educate the public (including affected grantees) about the impact of the Rule and grantees' continuing obligation to affirmatively further fair housing notwithstanding HUD's action. The video may be found at <https://texashousers.net/2018/01/09/jurisdictions-must-uphold-fair-housing-obligations-despite-delay-of-key-2015-hud-rule/>.

27. We have responded to continued requests for information and resources about HUD's action and continued to advocate for continued use of the robust HUD AFH process on a voluntary basis.
28. We have engaged in ongoing public education efforts, including community forums on fair housing in Amarillo, participating in national efforts to oppose HUD's action; and advising attorneys, community groups, and consultants working on now-suspended AFHs across Texas on the impact of HUD's suspension of the AFH submission requirement on ongoing fair housing obligations.
29. We have been trying to communicate with all of the local jurisdictions about their plans to move forward, and whether it will be with an AFH or an AI, an option that HUD provides in its Notice.
30. We are writing letters to the 65 most immediately impacted Texas jurisdictions regarding their continued obligation to affirmatively further fair housing, which is currently underway and will take an estimated 120 hours of staff time.
31. The delay caused by the initial January 5, 2018 suspension of the AFFH rule and now the May 23, 2018 withdrawal of the AFH tool also imposes on advocates like Texas Appleseed a huge burden because our forward momentum has stopped, including the likely loss of a knowledge base in our organization and loss of local contacts with grantees and advocates about AFFH issues between now and when the AFH process resumes under the Notice in 2024. We will need to divert resources from active participation in the HUD-mandated and more structured AFH process to a less effective effort and more intensive process of trying to convince jurisdictions to take actions that affirmatively further fair housing, without federal guidance or oversight. This work will now occur issue by issue, which is more resource

intensive and less effective rather than through an organized framework reached through the AFH process. We have also lost the important tool of a template for AFHs and the regulatory requirements for community participation and outreach in developing AFHs. We will have to continue to divert our resources from identifying fair housing barriers and solutions in local communities to convincing communities to voluntarily engage in a effective fair housing planning process. The action by HUD in suspending the AFH process has effectively derailed progress that we were making in many jurisdictions to examine long-standing patterns of discrimination and segregation and begin to address them.

32. The Federal Register notices published May 23, 2018 continue the effects of the January 5, 2018 suspension of the rule and will force us to continue diverting resources. The absence of the AFH tool eliminates a structural foundation for the assessment process that will make our work more difficult, if not impossible. As a result of HUD's actions, and in addition to the resources that we have already expended, on working to make the AFH process effective in many jurisdictions, Texas Appleseed has been required to divert time from other urgent issues in Texas, including developing a project to protect land rights of African Americans who own "heir property," *i.e.*, land that has been passed down informally from generation to generation without recorded transactions—complicating, among other things, eligibility for federal benefits for disaster recovery—and from providing input on the revision of the zoning code in Austin, Texas, to address patterns of segregation and access to opportunity in that city. We have also been unable to take on a variety of activities such as data and policy analysis, legal support and public education, that would help ensure that disaster recovery responses by the state and local communities to Hurricane Harvey are consistent with civil rights requirements. Texas Appleseed also has diverted resources away from fundraising and

other programmatic work to assist with our response to HUD's actions and to address various other capacity issues caused by the shift in focus relating to HUD's suspension of the AFH process.

33. The AFH process is still relatively new, and we anticipated that grantees would have some difficulty completing the process successfully, particularly those that did not have substantive AIs (or an AI at all) in the past. We also anticipated that a jurisdiction's first AFH would be the most difficult, not only because the process is new, but also because jurisdictions may have to gather and incorporate historical information and context that it will not necessarily need to update in subsequent AFHs. Our experience verifies those expectations. The AFH should be substantially easier for jurisdictions to conduct in later years (and require fewer resources) as they build expertise and become increasingly familiar with the concepts and process. If the rollout of the process is allowed to continue, jurisdictions will have an increasing number of completed AFHs and amount of HUD guidance to refer to for examples of both exemplary analyses and how to fix specific AFH deficiencies.
34. The AFH process and review of AFHs is also a relatively new process to HUD, and we similarly expected that the resources the department would have to expend would decrease over time both as internal expertise and processes are refined and as grantees need less technical assistance for future submissions. Neither jurisdictions nor HUD can increase their expertise and ability to accomplish the AFH process with fewer resources if they are not engaged in the AFH process. Not only does a two year delay do nothing but postpone the issues HUD claims justify the Notice, the delay imposes increased burdens on grantees, many of which were already involved in the AFH process. Grantees must now figure out

what the extension means to them and how they should comply with a process whose lack of guidance and certainty the AFFH Rule was intended to remedy.

35. Our experience has taught us that when confronting government-created and government-sanctioned segregation and discrimination that has been a part of communities for many years, education and information cannot and will not make change. Using a process that makes local and state governments accountable to the federal agency that funds them is the way that change can be made. The AFH process and tool provided the structure and the careful examination and focus that is necessary to make change. It provided the needed direct linkage between actual civil rights compliance and receipt of federal funding from HUD and a guided and standardized process that established clear expectations for jurisdictions and clear standards for HUD's acceptance or rejection of an AFH. It is the tool that was tailored to implement the government responsibility for undoing government mandated segregation. HUD's long-term suspension of local governments' obligations to conduct AFHs using the AFH tool has terminated or curtailed their examinations of their own respective roles, and those of other actors, in creating and continuing racial and ethnic disparities. It has significantly reduced the likelihood that state and local governments will be serious about undoing those patterns.

36. In Texas, having the AFH process restored immediately is particularly critical because several 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 Appleseed will lack the effective tools to ensure community participation and the leverage 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 the Texas Applesseed 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 in the past to the State. 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 various components of 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 29, 2018.



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MADISON SLOAN