**REPORTS ON DISCRIMINATION, SEGREGATION AND THE RIGHT TO ADEQUATE HOUSING**

QUESTIONNAIRE

**Background and Objective of the report**

The thematic reports of the Special Rapporteur on the right to adequate housing,
Mr. Balakrishnan Rajagopal, to the General Assembly in 2021 and to the Human Rights Council in 2021 will focus on the issue of discrimination in relation to the right to adequate housing, including the impact of spatial segregation in urban or rural-urban environments on the enjoyment of human rights.

Spatial segregation can be understood as the imposed or preferred separation of groups of people in a particular territory by lines of race, caste, ethnicity, language, religion or income status. Spatial, including residential segregation can have different forms depending on the territorial, cultural or historical context and is often characterized by forms of economic and social exclusion, inequity and spatial disparity in access to infrastructure, services and livelihood opportunities.

Discrimination is understood as any formal or substantive distinction, exclusion, restriction, preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination as to race, colour, sex, language, religion, national or social origin, political or other opinion, property, birth or other status - including disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social status - which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights.[[1]](#footnote-1)

The main objectives of the two interrelated reports will be to identify contemporary and historical forms of discrimination and segregation that affect the right to adequate housing, to highlight good practices in the prevention of discrimination and segregation and to provide guidance to States on how they can ensure their human rights obligations in relation to non-discrimination and the right to adequate housing.

To inform his reports Mr. Rajagopal welcomes contributions from States, local and regional governments, national human rights institutions, civil society organizations, academics, UN agencies and other stakeholders.

The questionnaire is detailed to allow for comprehensive collection of information covering all aspects of the right to adequate housing. However, responding to only those questions on which the responding organization, institution or entity has information, or expertise is much appreciated.

**BASIC INFORMATION**

1. Name of Individual, Organization, Institution, Agency or State: Ayuda Legal Puerto Rico

Type of Entity\*

[ ]  National Government or federal governmental ministry/agency

[ ]  Inter-governmental organization or UN agency

[ ]  Local or regional government, agency, representative or mayor

[ ]  Association, tenant union or housing cooperative

[ ]  NGO network, umbrella organization

[x]  Community-based NGO

[ ]  Academia

[ ]  Foundation

[ ]  National human rights organization, ombudsperson

[ ]  Real estate, urban planning or construction

[ ]  Real estate investor or investment fund

[ ]  Trade Union

[ ]  Other:

2. Categorization of your Work

Please select one or more responses, as appropriate.

[ ] Public administration

[x] Advocacy

[ ] Funding

[x] Legal Assistance

[x] Networking

[x] Policy

[x] Research

[ ] Technical Assistance

[x] Training

[ ] N/A

[ ] Other:

3. City/Town: San Juan

4. State/Province: Click here to enter text.

5. Country (please indicate your region or “international” if focus the work of your organization covers multiple countries); Puerto Rico

6. Contact e-mail (will remain confidential) in case we have questions:

**HOUSING DISCRIMINATION**

7. What specific forms of de facto or legal discrimination or barriers towards equal enjoyment of the right to adequate housing do the following groups face in your country (please provide evidence with examples, studies, reports and relevant statistical information):

* People of African Descent, or Roma
* Racial, caste, ethnic, religious groups/minorities or other groups
* Migrants, foreigners, refugees, internally displaced persons
* Women, children or older persons
* Indigenous peoples
* Persons with disabilities
* LGBTQ persons
* Low income persons, including people living in poverty
* Residents of informal settlements; persons experiencing homelessness
* Other social groups, please specify

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8. Discrimination in housing can affect various dimensions of the right to adequate housing and other human rights. Could you provide more details regarding the specific areas in which housing discrimination is experienced? Below are examples of various forms of discrimination that can be experienced in relation to different dimensions of the right to adequate housing:

*Accessibility*

* Discrimination in relation to access to land, including water and natural resources essential for habitation;
* Discrimination in relation to housing for rental or for acquisition or in accessing public or social housing;
* Access to emergency and/or transitional housing after disaster, conflict related displacement or in case of homelessness, family or domestic violence;
* Accessibility of housing for persons with disabilities or older persons, including access to housing for independent living or to care homes;
* data collection or requirements to furnish certain certifications resulting in the exclusion of particular persons from accessing housing;

Three years of disasters have brought us violently closer to a climate, housing, and infrastructure crisis that threatens the possibility of life in Puerto Rico. As the most recent US Census data shows, nearly 12% of our population has left in the last decade.[[2]](#footnote-2) The impact of a global climate crisis in our geography means more severe weather events, sea-level rise, severe floodings, and droughts. With 24% of our population living in high to high/medium risk zones[[3]](#footnote-3) and at least 245,586 houses located on flood plains[[4]](#footnote-4), addressing the need for effective disaster planning, response, and recovery, as well as the urgent demand for affordable and resilient housing infrastructure is crucial. Most of all, the government has an outstanding debt to ensure safe dwelling and resilient communities to survivors of multiple disasters. Because of the colonial status of Puerto Rico, when we refer to the government we refer to the share responsibility of the United States and Puerto Rico to address and remedy the needs of disaster survivors entitled to dignified housing.

Puerto Rico has been hit by three major disasters in the last four years: hurricanes, earthquakes and COVID19. The need for affordable resilient housing infrastructure has exponentially grown as the consequences of disasters remain unattended. Hurricane María destroyed 786,000 houses in Puerto Rico. According to local government estimates, the infrastructure costs related to the impact of this major disaster ascend to nearly $100 billion. More than 1.1 million requests for assistance were submitted to the United States emergency assistance agency (FEMA). Nearly 58% of applications and 75% of the appeals were denied. Two thirds of the families that received assistance to repair their homes received awards of less than $3,000. In February 2020, it was estimated that 15,000 to 18,000 families were still living under blue tarps. According to FEMA assessments, the seismic events that started in December 2019 and that continued throughout the first half of 2020, affected 52,370 houses. At least 630 of those were severely damaged or destroyed. These events mostly impacted the Southern coast of Puerto Rico. Some of the municipalities in this zone are part of coastal and mountainous geographies besieged by high poverty rates, some of the highest unemployment rates, housing insecurities, and environmental harms.

Numerous disaster response programs have failed to provide access to safe housing for disaster survivors. Although there have been significant allocation of funds to specific recovery programs, only a small quantity of houses have been rebuilt, which translates to unsafe conditions for thousands of low income families. For example, $3,289 billion were destined to repair houses that still need assistance. Between its opening date of the program in July 2019 and the closing of the application process, 27,006 families requested this assistance. As of today, only a small portion of the applicants have received a written determination on their cases. Only 904 homes have been repaired and 45 houses have been rebuilt.[[5]](#footnote-5)

While access to data is very difficult, particularly in regard to gender, race and other classifications, Ayuda Legal Puerto Rico has constantly requested these demographics to show the disparate impact of recovery on specific groups. 67% of the the aforementioned 27,006 applicants are women. Nearly half of them earn 50% or less than the median annual income. 4951 of those women are elder and 2506 reported having a disability.

*Habitability*

* discrimination in relation to housing conditions, overcrowding or housing maintenance;
* Exposure to health risks within the home, including lack of ventilation, heating or insulation, exposure to fire or housing collapse risk, unhealthy building materials, or other unhealthy housing covered by the WHO Guidelines on housing and health;
* Exposure to other risks which render housing uninhabitable, including sexual or gender-based violence, interference with privacy and physical security in the home and neighbourhood;
* Discrimination in relation to housing renovation or permission of housing extension;

***Affordability***

* **Discrimination in relation to access to public benefits related to housing;**
* **Lack of equal access to affordable housing;**
* **Discrimination in public and private housing financing;**
* **Discrimination related to housing and service costs, housing related fees, litigation or taxation;**

Hurricanes, earthquakes, and pandemics do not occur in a vacuum. Puerto Rico has been affected by an unsustainable public debt and austerity since 2006. Socioeconomic fragility has a direct impact on the plausibility of resilience amidst disasters. High poverty rates (+43%), together with a low labor force participation rate (<40%) mean that families have no reserves to prepare, mitigate, and address housing insecurity in the aftermath of a catastrophic event. Added to the shutdown of schools, health services and the privatization of essential services, the looming housing insecurity is a backdrop to disasters. Nearly half of those who rent or have a mortgage use at least 30% of their income to afford their house[[6]](#footnote-6). Between 2017 and 2020 - throughout three catastrophic events- 12,800 houses were foreclosed[[7]](#footnote-7). Nearly 26,000 families  await for public housing. At least 2,535 people are homeless[[8]](#footnote-8). As per the American Community Survey, 388,523 houses remain vacant[[9]](#footnote-9).

***Security of tenure***

* **Discrimination in relation to ownership or inheritance of housing and land and related natural resources including water including on the basis of a distinction between formal and informal tenure arrangements;**
* **Discrimination in relation to evictions, resettlement and compensation for loss or damage of housing, land or livelihoods;**
* **Differential treatment in land or title registration, permission of housing construction;**

As we have reiterated on several occasions, a title deed cannot be a condition to safe housing and recovery. Requiring a deed or other formal legal documents as sole proof of ownership penalizes and disparately impacts impoverished and historically vulnerable survivors.

Around 69% of the inhabitants of Puerto Rico are homeowners.[[10]](#footnote-10) This proportion is higher than other jurisdictions. Yet, ownership does not mean having a formal title. It is estimated that half of the population of Puerto Rico lacks a formal title. Nothing in Puerto Rico’s laws and regulations require homeowners to register their properties. Ownership, based on our civil code, is attained by possession, inheritance and other ways of exercising domain. Lack of formal documentation also responds to socioeconomic elements such as lack of access to justice, insecurity of tenure, and land rescues grounded on the unmet need for housing. In the aftermath of hurricanes Irma and María, nearly 77,000 families were excluded from receiving assistance because of their inability to prove ownership. This exclusion was possible due to FEMA’s incorrect and restrictive interpretation of its own regulations, which support a flexible interpretation of who is recognized as a homeowner.[[11]](#footnote-11)

We researched and drafted a sworn statement form to allow owners without title to prove their ownership through alternate documentation. This form did not require notarization, since, in Puerto Rico, a notary is a specialized attorney and thus, notarization translates into a costly process for low income individuals. In June 2018, almost 8 months after hurricane María, a group of advocates were able to finally move FEMA to accept the sworn statement. It was too late. FEMA’s reluctance to notify applicants about their right to appeal and use the sworn statement, placed on the backs of nonprofits the responsibility to let applicants know and provide them with the tools. Thousands of families might have lost the possibility of receiving immediate and much needed assistance for their homes.

We soon realized that the long term recovery plan (CDBG-DR Action Plan) included exactly the same requirement: repair, rebuild, and relocation assistance was conditioned to formal ownership. Thousands of applications were put on hold and transferred to a title clearance program, delaying eligibility evaluations for months and years. The plan assigned $44 million to the Title Clearance Program, The program prioritizes title clearance for properties built on PRDOH lands and has no clear guidelines on how to address the complex title issues, such as inheritances and informal tenure, which form the majority of cases.[[12]](#footnote-12) To date, after almost 18 months since the TC program started and more than $1.1 million disbursed, only 2 titles have been registered at the Property Registry. The position of ALPR then and reiterated now by the failure of this program, is that this initiative will not solve the “title issue” but delay urgently needed assistance.

The PRDOH needed to strike down a major barrier that everyone knew was going to stop assistance. Instead, they reinforce barriers by refusing to accept a version of the sworn statement and demanding people provide several notarized statements before sending them to the TCP. Early in the process, officials of the companies hired by the PRDOH asked ALPR for probono help to complete these notarizations. We refused.

It was not till mid 2020, by the approval of an Executive Order, that the title requirement started eroding. While repairs and rebuilding are now exempt of formal title requirements, program participants still are required to through the title clearance program. Further, PRDOH is yet to remove the condition clears title condition from relocation awards. Ironically, those with a clear title, but whose home is still mortgaged, may not access relocation assistance either, because PRDOH requires them to pay off the mortgage debt before they receive relocation for assistance.

We have presented several alternatives to the local government, including access to temporary rental assistance to families eligible for relocation, endorsing purchase option agreements conditioned on eventual title clearance, and adopting a standard of proof in accordance to our legal framework, accountability needs and social reality.

“Formal” ownership should not be an added obstacle for a low income family trying to survive the aftermath of a disaster. It must be noted that lack of clear ownership eligibility criteria has also been an obstacle for disaster survivors in New Orleans, California and North Carolina.[[13]](#footnote-13) Disaster aid needs clear guidelines on proof of ownership based on flexible criteria, acknowledging the access to justice and other systemic barriers low-income communities face. Doing so would speed up assistance and allow for local careful consideration of public policy options that could address informal tenure in a definitive and just manner. It is our position that individual legal strategies do not offer an effective solution to this issue. Because security of tenure should be a priority, the local government has a responsibility to address the totality of the issue.

*Availability of services, materials, facilities and infrastructure*

* Discrimination in relation to access to work, schooling, health care or public benefits based on the residential address or related to a lack of an official address;
* Public transportation services and transportation costs;
* Provision of water, sanitation, energy, waste collection and other utility services; their quality or cost, including interruptions/blackouts including policies relating to disconnection from utility services;
* spatial disparities in access to health care, education, child care, cultural and recreational facilities;

***Location***

* **Discrimination in relation to freedom of choice of the place of residency within the country, within a particular region or location;**
* **Discrimination based on place of residence or address, such as exclusion from invitation to job interviews or access to credit;**
* **Exposure to environmental health risks, such as external air quality, flooding, toxic ground exposure; noise; risk of landslides etc.;**
* **Living quality and physical security in the neighbourhood, including geographical disparities in policing and law enforcement;**

Flooding is the most frequent and costly natural hazard. Identifying diverse, sustainable, and cost-effective mitigation alternatives is essential for communities' resilience in the face of future disasters, achieve economic development, and ensure a just recovery. Within a climate-crisis and as experience in the geography of an island in the Caribbean, mitigation of flood zones needs to be a transversal. Around 24% of the population lives in high or high-medium risk zones. Forced relocation or no assistance cannot be the only options for families living in these geographic areas.

Main recovery plans in Puerto Rico (CDBG-DR) have an across the board prohibition to rebuild in flood zones. The CDBG-DR Plan states that people living in flood zones would not receive assistance to substantially repair or rebuild their homes. Their only option would be relocation. This without further consideration to the possibility to **mitigate.** While under no circumstances we would like to have people living in risk zones, absent a mitigation assessment, a sensible relocation plan, an adequate, affordable housing inventory, and a participatory process, relocation should always be the last option. We need a clear displacement minimization policy.

Almost four years after the disaster, a low-income family without a safe dwelling would have no choice but to relocate if the only alternative is to receive no aid at all. We should also keep in mind that relocation would only be an option if the family has a “perfect” title. If that is not the case, and most times it is for low-income families in coastal flood-prone areas, there is no alternative for them.

ALPR reiterated the need to adopt internationally acknowledged standards to mitigate displacements. These criteria include access to information, consultation and participation. We also demand a sensible and human rights-based relocation policy that accounts for the needs of individuals and families, as well as to the threat posed by checker-boarding, the lack of essential services in different municipalities, and destruction of already fragile social tissues. While prohibiting rebuilding in flood prone areas would leave thousands of low income families in insecure dwellings or forcibly displaced, other measures such as new construction moratoriums on coastal and flood zones could be a measure of adaptation and mitigation sensible to housing needs and climate change.

Mitigation strategies are effective, save recovery funds[[14]](#footnote-14), and provide a unique opportunity to be in a better position to face climate change. Wrongly applied, these initiatives may worsen the impact of an already inequitable recovery on low income, black, and other historically vulnerable communities. Transparency and participation in planning may lead the way to integrate mitigation plans at community, municipal and local levels, as well as to ensure a coherent use of diverse sources of mitigation funds.

Additionally, there is a blatant contradiction between policies that forbid construction in flood zones while mitigation is fundamentally unequal. Recent catastrophes have demonstrated a willingness and agility of local governments to act to mitigate floodings and landslides in tourist or affluent zones, while poor communities are left to fend for themselves.

*Cultural adequacy*

* Discrimination in relation to the recognition of culturally adequate dwellings as housing as well as equal access to public space;
* Prohibition of accessing, maintaining or constructing culturally adequate housing;
* Lack of recognition of mobile forms of residency.

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**9. Are there any particular current laws, policies or practices in your country, region or town/community that contribute to or exacerbate discrimination in relation to the right to adequate housing?**

* Policies, as those mentioned before, that hinder access to assistance for people with informal titles
* Policies that incentivize land and housing speculation in Puerto Rico, such as Law 20 and 22 which provide tax incentives to capital investors.
* Policies that lack accountability, community participation and that promote more speculation such as Opportunity Zones. 98% of the land in Puerto Rico have been deemed an Opportunity Fund.
* Eviction laws prioritize the rental market and provides an expedite proceeding to displace families.

10. Can you explain exemptions in national law that allow (certain) public, private or religious housing providers to give preferential or exclusive access to housing to members of a particular group, for example based on membership, employment contract, public service, age, disability, civil status, sex, gender, religion, income or other criteria?

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11. In case there may be differential treatment of particular groups in relation to housing, please explain why such treatment could be justifiable according to international human rights standards - for example positive measures benefiting a particular group to overcome systematic discrimination or disadvantage-or if it would amount to discrimination?

Security of tenure should not be conditioned to the burden of specific documentation, particularly in the case of disaster survivors who need housing repair and rebuild assistance. The state has a primary responsibility to address disaster harms and mitigate risks, and not use their own inaction to approve housing laws to protect informal owners to sanction families.

**SPATIAL AND RESIDENTIAL SEGREGATION**

12. What forms of spatial segregation along racial, caste, ethnicity, religion, nationality, migration status, heritage, economic status/income or other social grounds can be observed in urban and urban-rural contexts in your country?

Besides the instances mentioned before, the austerity and unsustainable debt crisis Puerto Rico has experienced since 2006 has exacerbated the segregation of some communities, particularly black and low income groups. Places like Salinas, a black community besieged by poverty and environmental crimes, have experienced the shutdown of nearly 50% [[15]](#footnote-15) of schools, as well as limited health and judicial services. Because public transportation is not functional, these budget cuts translate into worsening segregation for these communities.

13. What impacts do these forms of spatial and residential segregation have on affected communities? Please point to indicators such as rates of poverty, un-employment and under-employment; prevalence rates of malnutrition; disparities in access to services and facilities (such as access to schooling, health care or other public benefits); disparities in access to infrastructure (lack of and/or poor quality provision of water, sanitation, transportation, energy, waste collection and other utility services); rates of exposure to environmental health risks (poor air quality, flooding, toxic ground exposure, etc).

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14. Have any particular historical or current laws, policies or practices in your country, region or town/community caused or exacerbated segregation?

See above

15. In your view, what factors (current or historical) are the principal *drivers* of spatial and residential segregation in urban and urban-rural contexts in your country?

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16. Are there examples in your country of where spatial and residential clustering has been a result of voluntary choices of residence by members of particular groups?

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17. The preservation of cultural identity, the right to self-determination of indigenous peoples and the protection of minority rights are examples of grounds for which groups may choose to live separately. Can you comment on how these forms spatial/territorial separation are evidenced in your country, if these communities they are subject to discrimination and suffer adverse consequences from spatial segregation such as through disparities in access to services, infrastructure, living conditions, etc.?

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18. In your view, are certain forms of observed residential separation/voluntary clustering compatible with human rights law and if so why? (for example to protect rights of minorities or to respect the freedom of choice of individuals to decide with whom to live together).

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19. Are there any laws or policies requiring certain individuals (and their families) to live in particular housing provided to them or in a particular geographical area (e.g. asylum seekers, migrants, IDPs, refugees, ethnic, religious, linguistic or other minorities, indigenous peoples, persons with disabilities, public service and military personnel)?

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20. In your view, what are the principal *barriers* to diminishing spatial, including residential segregation?

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**MEASURES AND GOOD PRACTICES TO CURB DISCRIMINATION AND REDUCE SEGREGATION**

21. What laws, policies or measures exist at national or local level to prevent or prohibit discrimination in relation to the right to adequate housing?

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22. Have your State, regional or local Government adopted any positive measures, such as measures of affirmative action, to reduce discrimination, segregation or structural inequality in relation to housing? To what extent have such initiatives been successful to address housing discrimination and segregation?

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23. Have any particular laws, policies or measures been implemented to limit or reduce residential segregation? To what extent have such policies raised human rights concerns?

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24. What is the role of the media, as well as other non- governmental organizations, of religious and governmental institutions, in fostering a climate that reduces or exacerbates discrimination in relation to housing and segregation?

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25. Which institutional mechanisms exist to report, redress and monitor cases of discrimination or segregation in relation to the right to adequate housing and how effective have they been to address discrimination?

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26. In your view, what are the principal barriers to seek justice for discrimination/segregation in relation to the right to adequate housing?

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27. Can you specify how individuals and groups subject to structural discrimination or experiencing segregation can submit complaints to administrative, non-judicial or judicial bodies to seek relief? Please share any leading cases that have been decided by your courts or other agencies in this respect.

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**DATA ON DISCRIMINATION IN HOUSING AND SPATIAL/RESIDENTIAL SEGREGATION**

28. Is any data on housing disparities, housing discrimination and spatial segregation collected and publicly available? If so where can it be accessed? Are there any practical or legal barriers to collect and share such information in your country?

The information that exists is currently gathered by nonprofits like Ayuda Legal Puerto Rico and the Center for a New Economy. We need access to information regarding data that is not collected or available at this moment, such as the quantity of people who experience eviction and foreclosure processes without legal representation and a registry of landlords that could help monitor corporate accountability.

29. Can you kindly share any studies or surveys by local, regional or national Governments or by other institutions to understand better housing disparities, housing discrimination and spatial segregation and how it can be addressed (e.g. title and link, or kindly submit document).

Click here to enter text.

30. Can you provide information and statistics related to complaints related to housing discrimination, how they have been investigated and settled, and information on cases in which private or public actors have been compelled successfully to end such discrimination or been fined or sanctioned for non-compliance?

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1. See article 2.1 of International Covenant on Economic, Social and Cultural Rights and the related General Comment No. 20 of the Committee on Economic, Social and Cultural Rights. [↑](#footnote-ref-1)
2. Census Bureau, Preliminary Results (2020). [↑](#footnote-ref-2)
3. CDBG-MIT Action Plan, p. 332. [↑](#footnote-ref-3)
4. PRDOH estimates, based on FEMA applicants located in the 100-year flood plain. CDBG-DR Action Plan, p. 34. [↑](#footnote-ref-4)
5. Ayuda Legal Puerto Rico, Request for Public Information (20 April, 2021) [↑](#footnote-ref-5)
6. American Community Survey, 1 year estimates (2019) [↑](#footnote-ref-6)
7. Puerto Rico Office Financial Institutions Commissioner., 2018-2020 Mortgage Delinquency Report / (2018-2020) [↑](#footnote-ref-7)
8. Puerto Rico Department of Family, Homeless People Census (2019) [↑](#footnote-ref-8)
9. American Community Survey, 1 year estimates (2019) [↑](#footnote-ref-9)
10. American Community Survey, 1 year estimates (2019) [↑](#footnote-ref-10)
11. 44 FR 206.111 [↑](#footnote-ref-11)
12. CDBG-DR Program Guidelines Title Clearance Program May 27, 2020 (V.2) Pp. 22-32 [↑](#footnote-ref-12)
13. Fixing America;s Broken Disaster Housing Recovery System, p. 9. [↑](#footnote-ref-13)
14. National Institute of Building Science. Mitigation Saves. [↑](#footnote-ref-14)
15. Cierre de escuelas podría afectar 659 comunidades escolares. https://www.elvocero.com/gobierno/cierre-de-escuelas-podr-a-afectar-659-comunidades-escolares/article\_305185f8-49db-11e8-a567-03200536689b.html [↑](#footnote-ref-15)