

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI WORKERS CENTER, a Florida not
for profit corporation;
NEW FLORIDA MAJORITY, a Florida not
for profit corporation;
FULGENCIO GALLO, on behalf of himself
and all others similarly situated; and
RICHARD CALDAS, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

Case No.:

MIKE CARROLL, in his official
Capacity as Secretary of Florida's
Department of Children and Families,
and SONNY PERDUE, in his official
Capacity as Secretary of the United States
Department of Agriculture; and
UNITED STATES DEPARTMENT
OF AGRICULTURE,

Defendants.

**CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Preliminary Statement

1. Plaintiffs, Miami Workers Center, New Florida Majority, Fulgencio Gallo, and Richard Caldas, on behalf of themselves and the class they seek to represent, bring this action for declaratory and injunctive relief under the Administrative Procedures Act, 5 U.S.C. § 701 et seq., Title II of the

Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act of 1973 (“Section 504 of the Rehabilitation Act”), which bar disability-based discrimination in public benefits programs operated by Defendants. Individual Plaintiffs and the putative class are Hurricane Irma survivors with disabilities who have been and will be excluded from participation in the Hurricane Irma Disaster Supplemental Nutrition Assistance Program (“Irma D-SNAP” D-SNAP, or “Food for Florida”) due to Defendants’ failure to implement policies and procedures necessary to ensure reasonable accommodation of their disabling conditions in violation of the ADA, 42 U.S.C. § 12101, et seq., and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and the implementing federal regulations promulgated pursuant to both Acts. Organizational Plaintiffs each have members and constituents similarly situated.

2. The Irma D-SNAP program was designed to provide food assistance to persons affected by Hurricane Irma in Florida. As currently devised, Irma D-SNAP Food for Florida (“FFF”) application sites are only open and operational for between 2 and 8 days, depending on the county. In order for applicants to apply for Irma D-SNAP within the period of time designated for their county, DCF requires all applicants, or their authorized personal representative subject to certain conditions, to travel in person to the

designated DCF FFF application site to be interviewed (“in-person requirement”) on specific days. DCF’s in-person requirement and limited availability of site openings has resulted in lines as long as 50,000 persons or more at FFF sites, prompting well-documented chaos and early closures of locations by orders of police due to safety and health concerns.

3. While Plaintiffs and putative class members are unable to travel in person to or stand in crowded lines at a FFF site without significant hardship, Defendants refuse to provide reasonable modifications to their in-person requirement or extend the period of time to apply for D-SNAP to give persons with disabilities an opportunity to participate, even though modifications are necessary to avoid discrimination on the basis of disability.

4. As a result of Defendants’ refusal to reasonably accommodate individuals with disabilities who are eligible to apply for D-SNAP, named Plaintiffs and similarly situated persons have been denied or will be denied the opportunity to obtain much-needed D-SNAP benefits. Such refusal constitutes discrimination on the basis of disability by Defendants, MIKE CARROLL, in his official capacity as Secretary of Florida’s Department of Children and Families (“DCF”), SONNY PERDUE, in his official Capacity as Secretary of the United States Department of Agriculture (“USDA”), and the UNITED STATES DEPARTMENT OF AGRICULTURE, in the design, approval,

implementation and administration of DCF's D-SNAP Program created in response to Hurricane Irma in the State of Florida.

5. The inability to apply for and obtain D-SNAP benefits causes hunger and poses serious risks to Plaintiffs and class members. Plaintiffs seek declaratory and injunctive relief from the Court to compel the Defendants in their official capacities to implement ongoing, statewide, systemic policies and practices designed to ensure reasonable accommodations of the disabling conditions of Plaintiffs and the class they seek to represent, and to provide the Plaintiffs and all class members notice of such accommodations, so that they may be afforded meaningful access to Irma D-SNAP benefits.

Jurisdiction and Venue

6. This action is brought against Defendant Carroll pursuant to Title II of ADA, 42 U.S.C. § 12101, *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and against Defendants Perdue and USDA pursuant to Section 504 of the Rehabilitation Act of 1973 and the Administrative Procedures Act, 5 U.S.C. §§ 701-706.

7. Jurisdiction is conferred on the Court by 28 U.S.C. § 1361, 28 U.S.C. § 1331(a) because this action arises under the Constitution and laws of the United States, specifically the Administrative Procedure Act, 5 U.S.C. §

702, *et seq.* and Title II of ADA, 42 U.S.C. § 12101, *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

8. Declaratory relief is authorized by 28 U.S.C. §§ 2201(a) and 2202, and by Fed. R. Civ. P. 57. Injunctive relief is authorized by Fed. R. Civ. P. 65.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because all Plaintiffs reside or have their principal place of business in Miami-Dade County and a substantial part of the events or omissions giving rise to the claims occurred in Miami-Dade.

Parties

10. Plaintiff Miami Workers Center (“MWC”), is a Florida nonprofit corporation with its principal place of business in Miami. MWC represents, and has members and constituents who were harmed by Defendant’s discriminatory policies.

11. Plaintiff New Florida Majority (“NewFM”), is a Florida nonprofit corporation with its principal place of business in Miami and additional offices in Jacksonville. NewFM represents and has members and constituents who were harmed by Defendants’ discriminatory policies.

12. Plaintiff FULGENCIO GALLO is a resident of Miami-Dade County, Florida, and is disabled by an immunodeficiency disorder, Major

Depressive Disorder, Generalized Anxiety Disorder, Post Traumatic Stress Disorder, severe back pain, and Cubital Tunnel Syndrome. He meets the income and asset requirements for D-SNAP and incurred losses as a result of Hurricane Irma.

13. Plaintiff RICHARD CALDAS is a resident of Miami-Dade County, Florida, and is disabled by severe arthritis in his knees, scoliosis in his spine, diabetes, severe depression, anxiety, paranoia, and panic attacks. He meets the income and asset requirements for D-SNAP and incurred losses as a result of Hurricane Irma.

14. Defendant MIKE CARROLL is the Secretary of the Florida Department of Children and Families and is sued in his official capacity. As Secretary, Defendant Carroll is responsible for the statewide operation and administration of the Florida Food Stamp Program, including D-SNAP, as authorized by the federal Food Stamp Act. *See Fla. Stat. § 414.31.*

15. Defendant SONNY PERDUE is the Secretary of the U.S. Department of Agriculture, the federal executive agency for the administration of the SNAP and D-SNAP programs, and is sued in his official capacity.

16. Defendant UNITED STATES DEPARTMENT OF AGRICULTURE is the federal executive agency responsible for administering and supervising the SNAP and D-SNAP programs. USDA is an

agency subject to the federal Administrative Procedures Act, 5 U.S.C. § 551(1).

Class Action Allegations

17. Plaintiffs Gallo and Caldas sue on behalf of themselves and all others similarly situated, pursuant to Fed. R. Civ. P. 23(a), (b)(1)-(2). The proposed class is defined as follows:

All persons with disabilities, as defined by the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, who resided or worked in the State of Florida within counties covered for Irma D-SNAP as of September 5, 2017, and needed or will need reasonable accommodations to apply for Irma D-SNAP benefits and/or to participate in the program.

18. The prerequisites to a class action set forth in Fed. R. Civ. P. 23 are met in this action by the putative class.

19. The proposed class is so numerous that joinder is impracticable. Data from the United States Census American Community Survey conducted in 2016 indicate that at least 8.5 percent of Floridians have a disability. U.S. Census Bureau, *Quick Florida Facts*, available at <https://www.census.gov/quickfacts/fact/table/FL/DIS010215#viewtop> (last visited Nov. 2, 2017). Eighteen percent, or 315,238, of Florida's population aged 20 to 64 who are living in poverty have a disability. Florida Senate, Committee on Children, Families, and Elder Affairs, *Florida's Families and Children Below the Federal Poverty Level*, Feb. 17, 2016, available at

<http://edr.state.fl.us/Content/presentations/social-services/PovertyDemographicsPresentation.pdf> (last visited Nov. 2, 2017).

20. Many persons who would qualify for Irma D-SNAP in Florida are persons with disabilities as that term is defined in the ADA and Section 504 of the Rehabilitation Act, but are either homebound or have physical or mental impairments that require reasonable accommodations to the requirements and/or current time-limits on the D-SNAP application sites which have prevented them or will prevent them from participating in the program. On information and belief, the in person interview requirements and the limited time for applications alone resulted in:

- a. Thousands of Floridians with disabilities who were otherwise qualified for D-SNAP being prevented from applying because they were unable to travel to the FFF sites or stand in lengthy lines; and
- b. Hundreds of the thousands of Floridians with disabilities who traveled to and stood in line to be interviewed at FFF locations at across the state despite their disabilities being turned away due to early closures of the sites.

21. There are questions of law and fact common to the proposed class, including but not limited to:

- a. Whether Defendants, individually or collectively, are in violation of the ADA and Section 504 of the Rehabilitation Act and implementing regulations by having failed, failing and/or continuing to fail to provide reasonable accommodations to applicants with disabilities who are subject to the in-person interview requirement of Irma D-SNAP;
- b. Whether each of the Plaintiffs has at least one disability, as defined by both the ADA and Section 504 of the Rehabilitation Act, and implementing federal regulations;
- c. Whether each Plaintiff is a “qualified individual with a disability” as defined under the ADA and implementing federal regulations;
- d. Whether each Plaintiff is a “handicapped person” and a “qualified handicapped person,” as defined by Section 504 of the Rehabilitation Act, and implementing federal regulations;
- e. Whether, as a result of Plaintiff's’ physical or mental disabilities, their abilities to engage in at least one of the major life activities are limited; and
- f. Whether Defendants denied and/or continue to deny Plaintiffs’
- g. meaningful access to Irma D-SNAP benefits on account of disability.

22. The claims of the named Plaintiffs are typical of the claims of the proposed class. The named Plaintiffs and members of the proposed class all claim Defendants' failures to make reasonable accommodations violate their rights under Title II of the ADA and Section 504 of the Rehabilitation Act. Defendants' violations of the laws as alleged herein have deprived or will deprive Plaintiffs and members of the putative class of the opportunity to apply for D-SNAP benefits. Therefore, all class members will suffer the same or similar injuries for the purposes of the injunctive and declaratory relief sought.

23. Plaintiffs will fairly and adequately protect the interests of the proposed Plaintiff class. In supporting their individual claims, Plaintiffs will simultaneously advance the claims of absent class members. Counsel is aware of no conflicts among members of the proposed Plaintiff class.

24. The prosecution of separate actions by individual members of the class across 48 Florida counties and three federal districts would create a risk of adjudications with respect to individual members which would, as a practical matter, substantially impair the ability of other members to protect their interests.

25. Plaintiffs' counsel are experienced in complex class litigation involving public benefit programs and civil rights laws. Counsel have the

resources, expertise, and experience to prosecute this action on behalf of the Plaintiffs' class.

26. Plaintiffs' claims satisfy the requirements of Fed. R. Civ. P. 23(b)(2), in that Defendants have acted on grounds generally applicable to the proposed class, thereby making appropriate final injunctive relief and declaratory relief with respect to the proposed class as a whole.

Statutory and Regulatory Scheme of the Federal Supplemental Nutrition Assistance Program ("SNAP")

27. In order to "alleviate...hunger and malnutrition," Congress enacted the Food Stamp Program to "permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation." 7 C.F.R. § 271.1.

28. Effective October 1, 2008, the federal Food Stamp Program was renamed the Supplemental Nutrition Assistance Program (SNAP). Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, §§ 4001 and 4002, 122 Stat. 1651, 1853-1860 (the "Food Stamp Act").

29. At the federal level, SNAP is administered by the Food and Nutrition Service ("FNS") of the USDA.

30. The federal government provides 100 percent funding to the states, including the State of Florida, for all benefits under SNAP, and at least

50 percent of a state's administrative costs involved in the operation of the program. 7 U.S.C. §§ 2013(a), 2019, 2025(a); 7 C.F.R. §§ 277.1(b), 277.4.

31. Each state must designate a single state agency responsible for administering SNAP and complying with federal food stamp statutory and regulatory requirements. 7 U.S.C. §§ 2020(a), (d), and (e); 7 C.F.R. §§ 271.4(a), 277.4. The state agency's responsibilities include the certification of household eligibility and the issuance of food stamp benefits to those households. 7 U.S.C. §§ 2020(a)(1), (e).

32. Florida participates in SNAP. The Florida Department of Children and Families ("DCF") is the single state agency responsible for administering Florida's SNAP program in compliance with the Food Stamp Act and its implementing FNS regulations. Fla. Stat. § 414.31.

33. In the regular SNAP program, persons with disabilities, as well as all other applicants, may apply for benefits online, by phone, by fax, or through the mail. Applicants for regular SNAP are not required to travel in-person to DCF for an interview; instead, their interviews are conducted by telephone.

Purpose and Administration of D-SNAP

34. In a disaster, USDA has the authority to establish a D-SNAP program pursuant to the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, Pub. Law No. 93-288; 42 U.S.C. § 5179, and the Food Stamp Act and accompanying regulations. 7 U.S.C. § 2014(h); 7 C.F.R. § 280. D-SNAP provides temporary food assistance benefits to eligible individuals affected by a disaster in the form of issuance of SNAP benefits to assist in paying for food. Only non-SNAP recipients are eligible for D-SNAP.

35. D-SNAP eligibility criteria is designed to assist a broader range of the public than regular SNAP. To that end, not only does D-SNAP have higher income eligibility guidelines, consider net income instead of gross-income, and allow deductions for disaster-related expenses, D-SNAP also permits students and otherwise-ineligible immigrants to participate.

36. D-SNAP benefits are 100 percent federally-funded. Eligibility is based on federal guidelines that limit eligibility to persons whose income and assets, minus disaster-related expenses, are within federal D-SNAP eligibility criteria.

37. D-SNAP benefit levels are fixed amounts based on household size. An eligible family of three, for example, will receive \$504; an eligible single person will receive \$192.

38. Individuals currently receiving SNAP benefits are not eligible to apply for the D-SNAP program, but they are provided a supplement to their regular monthly SNAP benefit ("Parity Payments").

DCF's Implementation of Irma D-SNAP as Approved by USDA

39. At Governor Rick Scott's request, President Donald J. Trump declared Florida a major disaster area on September 10, 2017, due to Hurricane Irma that began on September 4, 2017. FEMA, *Initial Notice*, Sept. 10, 2017, *available at* <https://www.fema.gov/disaster/notices/initial-notice-2017> (last visited Nov. 2, 2017).

40. Soon after Irma hit, DCF submitted a request to USDA to administer a D-SNAP program for 48 counties impacted by Hurricane Irma. In its request, DCF estimated that it anticipated that as many as 2,487,817 households may apply for D-SNAP. At the time of this initial filing, USDA expressed concerns about DCF's readiness to, among other things, accommodate persons with disabilities. In a letter to DCF dated September 15, 2017, USDA stated:

FNS is concerned that DCF has not provided a complete plan that delineates the intended D-SNAP procedures and processes, as well as contingency plans. As stated in an email and telephone conversation with DCF staff on September 14, 2017, DCF must provide FNS with following information: . . . Documentation that the State has sufficient staff to process D-SNAP applications, has the flexibility to augment staffing as needed, has a crowd management strategy, and has sufficient security to safely manage the sites; . . . Commitment and ability to provide human comforts (water, restroom facilities , etc.) for D-SNAP applicants, including reasonable accommodations for the elderly or disabled.

41. In response, although DCF made minor changes to the proposed D-SNAP plan it formally submitted to USDA for approval, DCF provided no accommodations for individuals with disabilities.

42. Despite DCF's failure to provide reasonable accommodations for persons with disabilities, USDA approved DCF's plan on or about September 21, 2017. In granting DCF's request, USDA conditioned approval of Florida's request on, among other things, DCF's assertions that:

- a. DCF is able to provide human comforts such as water and restroom facilities;
- b. DCF will make reasonable accommodations for the elderly and disabled;
- c. DCF will provide sufficient staff to provide D-SNAP applications; and
- d. DCF has the flexibility to augment staffing at each FFF site as needed.

43. Other than this language in the September 21, 2017 letter, USDA took no action to confirm or ensure that reasonable accommodations were provided by DCF. To the contrary, the plan submitted and approved on its face fails to do so.

44. USDA also approved DCF's request to stagger application periods by county, to serve households on designated days by last name, and to reserve the final day of operation at each location to serve applicants who missed their designated day. In addition, USDA approved application periods of two to seven days per county beginning September 27, 2017, but "strongly encouraged...[DCF] to consider using all seven days to serve disaster-affected households, if needed" and instructed DCF to request a modification if it needs more than seven days to serve applicants. USDA's September 27, 2017 approval was for a 30 day period from September 5, 2017 to October 4, 2017. *USDA, Disaster Supplemental Nutrition Assistance Program--Approval for 48 Florida Counties*, Sept. 21, 2017.

45. As a term of approval, USDA further required DCF to:

"...[C]losely monitor D-SNAP...sites, continue to assess the volume of potential applicants, and adjust D-SNAP sites, accommodations for human needs, staff and resources and security as needed...[and] use temporary staff employees [as well] as request additional staffing support from 'Buddy State' SNAP agencies."

Id.

46. On October 17, 2017, DCF made an additional request to USDA, asking for permission to reopen D-SNAP sites in Broward and Miami-Dade Counties for three additional days and to extend D-SNAP in all counties going forward beyond the standard seven-day operation. USDA responded on October 19, 2017, allowing DCF to extended D-SNAP in Miami-Dade to a

total of eight days and in Broward County for a total of seven days. However instead of approving DCF's request to extend D-SNAP in all counties, USDA asked DCF for additional justification. *Letter from Mike Carroll, DCF, to Robin Bailey, USDA, Oct. 17, 2017; USDA, Disaster Supplemental Nutrition Assistance Program--Approval for 48 Florida Counties--Modification--Partial Approval, Oct. 19, 2017.*

47. As of October 30, 2017, DCF reports that it had processed more than 937,000 D-SNAP applications. DCF, *DCF Issues Updates for Federal Food for Florida Program, Oct. 30, 2017, available at* <http://wwwnew.dcf.state.fl.us/press-release/dcf-issues-updates-federal-food-florida-program-2> (last visited Nov. 2, 2017).

48. USDA policy governing D-SNAP requires reasonable accommodations to D-SNAP policies and procedures for applicants with disabilities. In that policy, USDA urges state agencies implementing D-SNAP to gather county-by-county data to assist in tailoring a response to D-SNAP, including but not limited to consideration of the percentage of elderly and disabled populations. Specifically, USDA states that it:

[E]xpects and encourages the State agency to consider the potential needs of disaster survivors with disabilities in their community and to include any special accommodations and alternative interview procedures as part of their D-SNAP plan and disaster-specific D-SNAP request.

USDA, Supplemental Nutrition Assistance Program (SNAP), *Disaster State Guidance: Policy Guidance, Lessons Learned, and Toolkits to Operate a Successful D-SNAP*, July 2014, available at https://www.fns.usda.gov/sites/default/files/D-SNAP_handbook_0.pdf (last visited Nov. 2, 2017).

49. Notably, USDA policy also requires alternative procedures to ensure access to the D-SNAP interview. *Id.* For applicants unable to appear at the FFF site or otherwise unable to complete the interview process, USDA states that state agencies should consider:

[P]roviding reasonable accommodations and interview access to the elderly, persons with disabilities, and other vulnerable populations include:

- Satellite application sites strategically located to serve vulnerable populations (i.e. community or senior centers)
- Special public transport to and from application sites
- Home visits to conduct the interview for applicants with disabilities that make them otherwise unable to visit the application site
- Skype or similar technology to facilitate off-site interviews.

Id.

50. In DCF's Irma D-SNAP program, however, no exceptions to in-person interviews have been or will be provided in accordance with those required or suggested by or in USDA policy. Instead, DCF has required and continues to require all D-SNAP applicants, to appear in person. If applicants have disabilities that prevent them from complying with the in-person

requirement, DCF suggests on its FFF web site that they appoint an authorized representative to act in their stead to complete the eligibility process. DCF, *Authorized Representative Information, available at* <https://www.dcf.state.fl.us/programs/access/fff/docs/AuthorizedRepresentatives.pdf> (last visited Nov. 2, 2017). However, authorized representatives must possess intimate knowledge of the applicant's personal and financial affairs and be willing to voluntarily subject themselves to criminal prosecution for fraud and overpayment to the same extent as the applicant household. *Id.*

51. Under DCF's Irma D-SNAP program, accommodations for persons with disabilities are only available after D-SNAP applicants appear in-person at a DCF FFF site. In DCF's October 30, 2017, *DCF Issues Updates for Federal Food for Florida Program, available at* <http://wwwnew.dcf.state.fl.us/press-release/dcf-issues-updates-federal-food-florida-program-2> (last visited Nov. 2, 2017), DCF states:

Special accommodations are available for the elderly and disabled. Onsite staff are working to monitor the population of those in lines to assist elderly and disabled residents to the front of the line. Those who need these accommodations should find staff to inquire about expedited service.

52. In Miami-Dade alone, a county of over 2.7 million people with a 20 percent poverty rate, DCF initially designated only five locations at which applications for D-SNAP applicants would be open for five days.

Although Defendants have now plans to reopen Miami-Dade's FFF site for three additional days, it is unlikely, on information and belief, that three more days will be adequate to serve the thousands of residents with disabilities who still continue to need Irma D-SNAP and continue to face the same barriers to applying that they faced the first time that Miami Dade's FFF was open. The result in Miami Dade County and many other counties across the state has been turmoil, overcrowding and abrupt early closures of FFF sites that has left and will continue to leave thousands of persons with disabilities unable to complete their application for D-SNAP.

53. Based on their experience with the regular SNAP program, available demographic data and information concerning individuals who are currently receiving or eligible for disability-related benefits and services, and DCF's own projections on the number of D-SNAP applications expected, Defendants knew, or should have known, that the plan that was submitted for its Irma D-SNAP program would not meet the needs of many otherwise eligible persons with disabilities.

54. Reasonable modifications in Defendants' policies, practices, procedures, and methods of administration are necessary to enable Plaintiffs and class members to apply for and obtain D-SNAP benefits.

55. Reasonable modifications in Defendant's policies, practices, and procedures are necessary to afford Plaintiffs and class members an opportunity to apply for and obtain D-SNAP benefits on terms equal to and as effective as those enjoyed by non-disabled persons.

56. Defendants have failed to consider the rights of qualified individuals with disabilities, their rights to receive benefits and services pursuant to Section 504 of the Rehabilitation Act and the ADA, and how to provide reasonable accommodations to such individuals under D-SNAP.

57. Defendants do not have effective procedures in place to accept and act upon requests for reasonable accommodations and to ensure that any accommodations made as a result of such requests are carried out under D-SNAP.

58. DCF does not have systems in place to accommodate a travel hardship for those that have difficulty or are unable to travel to the D-SNAP application sites.

59. Travel times by public transportation to these D-SNAP application sites are up to two hours or longer, depending on where the individual resides in the covered zip codes. For those that need wheelchair accessibility, the travel times are even longer.

60. Counsel for Plaintiffs repeatedly brought DCF's failure to provide reasonable accommodations to persons with disabilities to the attention of both DCF and USDA, and specifically requested accommodations for individuals with disabilities. *Letter from JoNel Newman, counsel for Plaintiffs, to Jessica Shahin and Robin Bailey, USDA, Oct. 25, 2017; Letter from JoNel Newman, counsel for Plaintiffs, to Jeri Flora-Culley and copies to Lynn Hewitt, Assistant General Counsel, DCF, Oct. 17, 2017.* However, as of the date of filing this action, neither DCF nor USDA has acted to conform DCF's D-SNAP plan to the ADA or Section 504 of the Rehabilitation Act.

**Statutory and Regulatory Scheme of the ADA and
Section 504 of the Rehabilitation Act**

61. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against persons with disabilities in all programs and activities receiving federal funds. 42 U.S.C. § 794(a). Similarly, Title II of the ADA also prohibits, among other things, discrimination in programs, services, and activities of State governments, agencies or departments.

62. Under the ADA:

No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can

demonstrate that making the modifications would fundamentally alter the nature of the Service, program, or activity.

28 C.F.R. § 35.130; *see also* 7 C.F.R. § 272.6(a) (specifically making the ADA and Section 504 applicable to SNAP).

63. Congress enacted the ADA in 1990 to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1); 42 U.S.C. § 12101(a)(8).

64. The U.S. Department of Justice ("DOJ") has promulgated regulations implementing the requirements of Subtitle A of Title II of the ADA, applicable to all services, programs, and activities provided or made available by public entities (with the exception of specified transportation activities). 28 C.F.R. §§ 35.101, 35.102.

65. The ADA specifies that "the term 'discriminate' includes not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity." 42 U.S.C. § 12112(b)(5)(A).

66. The U.S. DOJ ADA regulations prohibiting "discrimination" provide in relevant part that:

A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability-- (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service[.]

67.28 C.F.R. § 35.130(b)(1)(i).

68. The ADA further requires public entities, including states, to make reasonable modifications to policies, practices and procedures when necessary to avoid discrimination against persons with disabilities, unless the modifications would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7).

69. Section 504 of the Rehabilitation Act, which was enacted 17 years prior to the ADA, similarly provides that:

No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

29 U.S.C. § 794(a).

70. The Act defines the scope of “program or activity” as including ...all of the operations of ...a department, agency, special purpose district, or other instrumentality of a State or of a local government; or the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government[.]

29 U.S.C. § 794(b)(1).

71. The U.S. DOJ has been charged by Executive Order with coordinating the implementation of Section 504. 28 C.F.R. §§ 41.1, 41.2.

72. Both Florida and federal law require DCF to operate SNAP consistent with Congressional mandates, including but not limited to the ADA and Section 504.” *See* 414.31(1), Fla. Stat. (stating that DCF must operate SNAP as authorized by Congress of the United States); 7 C.F.R. § 272.6 (stating that state agencies shall not discriminate against individuals receiving FNS services).

Factual Allegations

Plaintiff Miami Workers Center

73. The Miami Workers Center (MWC), is a Florida nonprofit corporation with its principal place of business in Miami. It is a strategy and action center whose purpose is to build the power and self-determination of south Florida's most oppressed communities. Through its Just Disaster Recovery Project, MWC provides support to individuals in low-income communities of color who seek equal treatment and fair access to government resources in the aftermath of disasters. Many low-income, disabled individuals are among the individuals and coalition partners that MWC represents.

74. Plaintiff MWC sues on behalf of its members and constituents with disabilities who were, and continue to be, affected by the Defendants' lack of reasonable accommodations for persons with disabilities in administration and oversight of the Irma D-SNAP program and who have standing to sue on their own.

75. Plaintiff MWC spent significant staff time and other resources advising members and the surrounding Miami-Dade community of available benefits after Hurricane Irma, including the D-SNAP program.

76. When disabled members and constituents were unable to access these benefits in Miami-Dade due to the grueling conditions and Defendants' lack of reasonable accommodations, Plaintiff MWC was forced to divert staff time and resources to investigating the issue and advocating for its qualified members and constituents rightful access to this program. These actions were apart from any actions in pursuit of this litigation.

77. Despite those efforts, they have been unable to halt, modify, or reverse the illegal conduct of the Defendants.

78. The interests that Plaintiff MWC seeks to protect are germane to its purpose.

79. Neither the claim asserted nor the relief requested by Plaintiff MWC may require the participation of individual members in the lawsuit.

Plaintiff New Florida Majority

80. Plaintiff New Florida Majority (“NewFM”) is a Florida nonprofit corporation with its principal place of business in Miami and additional offices in Jacksonville, working with marginalized and excluded constituencies throughout the state toward an inclusive, equitable, and just Florida. Through its Climate Justice program and Community Emergency Operations Centers, it provided direct food assistance and other support to low income community members in the wake of Hurricane Irma, and continues to advocate for transparency, equitable recovery and access to resources throughout the state. They also facilitate a statewide coalition of community based organizations that provide food assistance and other Hurricane relief. Many qualified individuals with disabilities are among the individuals and coalition partners that NewFM convenes and represents.

81. Plaintiff NewFM sues on behalf of its members and constituents with disabilities who were, and continue to be, affected by the Defendants’ lack of reasonable accommodations for persons with disabilities in administration and oversight of the Irma D-SNAP program and who have standing to sue on their own.

82. Plaintiff NewFM expended significant staff time and resources providing direct food assistance to impacted individuals across the state who

were unable to access other programs after Hurricane Irma. They also diverted resources to educate the public and advise of available benefits, including the D-SNAP program.

83. When disabled members and constituents were unable to access D-SNAP benefits in multiple constituent communities across the state due to the grueling conditions and Defendants' lack of reasonable accommodations, Plaintiff NewFM was forced to stop work on existing, time-sensitive projects and divert significant staff time and resources to address this situation. Efforts included assisting applicants being turned away and/or unable to stand in line, consulting with officials on and off the scene to get timely information to applicants, and educating the public, its qualified members', coalition partners', and other constituents' on their rights. These actions were apart from any actions in pursuit of this litigation.

84. Despite those efforts, they have been unable to halt, modify, or reverse the illegal conduct of the Defendants.

85. The interests that Plaintiff NewFM seeks to protect are germane to its purpose.

86. Neither the claim asserted nor the relief requested by Plaintiff NewFM may require the participation of individual members in the lawsuit.

Plaintiff Richard Caldas

87. Plaintiff RICHARD CALDAS is a 48 year-old man with serious physical and mental health problems who lives in Miami-Dade, Florida. He brings this action on behalf of himself and all others similarly situated.

88. Mr. Caldas suffers from disabilities within the meaning of the ADA and Section 504 of the Rehabilitation Act, including severe arthritis in his knees, scoliosis in his spine, diabetes, severe depression, anxiety, paranoia, and panic attacks.

89. Mr. Caldas' disabilities limit one or more major life activities making him a "qualified individual with a disability" as defined in the ADA at 42 U.S.C. § 12131(2).

90. Among his other disabilities, Mr Caldas's panic attacks make it impossible for him to navigate a crowd. He feels paralyzed. His heart races, he sweats heavily, and must remove himself from a crowded situation. Mr. Caldas manages on a day to day basis by going out very rarely. He typically asks his roommate to do his grocery shopping. If he cannot avoid going out, he is careful to go to the grocery shopping very late at night when there is no one else shopping.

91. Mr. Caldas does not have a car and uses a bicycle to get around. He cannot use public transportation because it aggravates his anxiety and panic disorder.

92. Mr. Caldas is unable to stand for more than a few minutes at a time before being subjected to horrible pain in his knees and back. Standing in line for even a short time, let alone hours, aggravates Mr. Caldas' physical impairments to an intolerable level.

93. Mr. Caldas' diabetes requires a special diet and frequent hydration and readily available access to a restroom because of a frequent need to urinate. In addition, his diabetes also causes him to fatigue easily, especially when water and food are not readily accessible.

94. Mr. Caldas' sole income is from renting out a room in his apartment for \$900 a month which he puts toward his mortgage and other living expenses. After paying his bills, he only has about \$150 per month left for food. He has no other income or significant assets.

95. Because of his poverty, Mr. Caldas struggles on a daily basis to make ends meet and secure sufficient nutrition, and to meet his special dietary needs. This day-to-day struggle was made much worse by Hurricane Irma because he lost all of the food that he had in his refrigerator and freezer.

96. Plaintiff Caldas is not a current recipient of SNAP benefits, and was not at the time of Hurricane Irma. He wanted to apply for D-SNAP benefits by using the reasonable accommodation of being interviewed through procedures other than in-person at a FFF site. He has no family members or friends who could apply for him as his authorized representative.

97. Mr. Caldas meets the essential eligibility requirements for the receipt of D-SNAP.

98. Mr. Caldas is physically and mentally unable to travel in person to a FFF site and stand in line, even for a short period of time. Despite his eligibility for the D-SNAP program, and his extreme need, Mr. Caldas was unable to access the food assistance he needs because DCF failed to provide any accommodations for his disability.

99. When DCF opened D-SNAP in Miami-Dade in October, Mr. Caldas tried to register for DSNAP online several times. At no time during registration did DCF notify Mr. Caldas of his right to request an accommodation to DCF's in-person requirement. When this did not work, he saw that the only way he could apply for D-SNAP was to go to a large crowded public venue and to wait outdoors in line for many hours. He saw news coverage depicting the crowds and the lines. He knew that if he tried to go to apply, he would suffer a panic attack. In addition, he knew that his knees

and back could not support standing in line, even for an hour, and his diabetes would require drinking water and restrooms that were in short supply.

100. On November 1, 2017, Counsel's office phoned DCF to request particular disability accommodations on behalf of clients for the D-SNAP Program. The DCF representative stated that the only accommodation available was for the individual to send an authorized representative to the Stadium. When asked if there were alternatives for disabled individuals who could not send an authorized representative to the Stadium, DCF said that no other accommodations or alternatives were available.

101. Despite his eligibility for the D-SNAP program, and his extreme need, Mr. Caldas was unable to access the food assistance he needs because DCF failed to provide any accommodations for his disability.

Plaintiff Fulgencio Gallo

102. Plaintiff Fulgencio Gallo is a 55 year-old man with serious physical and mental health problems who lives in Miami-Dade, Florida. He brings this action on behalf of himself and all others similarly situated.

103. Mr. Gallo, who spent years as a political prisoner in Cuba, now suffers from disabilities within the meaning of the ADA and Section 504 of the Rehabilitation Act, including an immunodeficiency disorder, Major Depressive Disorder, Generalized Anxiety Disorder, Post Traumatic Stress

Disorder, severe back pain caused by Multilevel Degenerative Disc Disease , and Cubital Tunnel Syndrome.

104. These disabilities limit Mr. Gallo's major life activities making him a "qualified individual with a disability" as defined in the ADA at 42 U.S.C. § 12131(2).

105. He experiences great difficulty performing manual tasks, walking, standing, sitting, reaching, lifting and bending as a result of his degenerative disc disease and cubital tunnel syndrome. His mental conditions and compromised immune system further complicate his ability to perform major life activities.

106. Mr. Gallo lives with his wife and his disabled child. The family's sole income is from his wife's work (normally \$1,400 per month), and his son's SSI check of approximately \$700 a month.

107. Mr. Gallo lost all perishable food in Hurricane Irma due to a power outage, and his wife was unable to work for about one and a half weeks. The family also incurred losses due to water damage in their apartment.

108. Plaintiff Gallo is not a current recipient of SNAP benefits, and was not at the time of Hurricane Irma, but needed to apply for D-SNAP benefits. Mr. Gallo would like to apply for D-SNAP benefits by using the

reasonable accommodations of being interviewed through procedures other than in-person at a DCF FFF site. He has no family members or friends who could apply for him as his authorized representative.

109. Mr. Gallo electronically preregistered for D-SNAP because he knew that his disabilities would make it impossible for him to wait standing up in the heat for long periods of time. Knowing that he would not be able to tolerate waiting in line in the heat for very long, he went to DCF's FFF D-SNAP site at Miami-Dade College North site at 11380 NW 27th Avenue in Miami. He arrived by 6:00 am before the site even opened. There was already a very long line.

110. He stood in that line for approximately seven hours in the heat with no shelter, no water, and no offer of assistance or opportunity to be attended to earlier due to his disabilities. During that time he endured heat and inclement weather. He began to suffer severe body pain, leg cramps, swollen feet, and fatigue. No one asked him if he needed to be accommodated due to a disability. He did not see a second line for persons with disabilities. He saw no sign that said he could ask for an accommodation. He did not see or hear any staff asking anyone in the line if they had disabilities and need to be moved to the front of the line.

111. By 1:00 pm, when he had made little or no progress toward getting the food he needed, was still unattended and suffering from severe body pain, leg cramps, swollen feet, and fatigue, and feared he would suffer heat stroke, he reluctantly left the D-SNAP site because he was at risk of heat stroke and damage to his health.

112. Mr. Gallo never received the D-SNAP benefits he had pre registered for and so desperately needed.

I. CLAIMS FOR RELIEF

FIRST CLAIM

VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973 AGAINST BOTH DEFENDANTS

113. Paragraphs 1 through 113 are incorporated by reference as if fully stated herein.

114. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulations, prohibit discrimination against persons with disabilities by federal agencies and recipients of federal funding.

115. Defendant USDA is a federal agency within the meaning of the Rehabilitation Act. Defendant PERDUE is Secretary of USDA.

116. Defendant DCF is a recipient of "federal financial assistance," as defined by Section 504 of the Rehabilitation Act of 1973 and implementing

regulations, thereby subjecting DCF to Section 504. 29 U.S.C. § 794(b)(1); 28 C.F.R. § 41.3(d),(e); 7 C.F.R. § 15b.3(f),(g).

117. Each individual Plaintiff and member of the putative class has at least one “disability,” as that term is used in Section 504 of the Rehabilitation Act. Section 504 defines a disability as “physical or mental impairment that substantially limits one or more of major life activities of such individual.” 29 U.S.C. § 705(20)(B). Each organizational plaintiff has members and constituents with at least one “disability.”

118. Each individual Plaintiff and member of the putative plaintiff class is a “handicapped person,” as that term is used in regulations implementing Section 504. Those regulations define a handicap as a physical or mental impairment that substantially limits one or more of the major life activities of such individual. 28 C.F.R. § 41.31(a); 7 C.F.R. § 15b.3(i). Each organizational plaintiff has members and constituents that are “handicapped person(s).”

119. Each individual Plaintiff and member of the putative class meet the essential eligibility requirements defined in regulations implementing Section 504. 28 C.F.R. § 41.32; 7 C.F.R. § 15b.3(n)(4). Each organizational plaintiff has members and constituents that meet these requirements.

120. Defendants discriminated and continue to discriminate against Plaintiffs and members of the putative class in violation of 29 U.S.C. § 794(a) and its implementing regulations, 28 C.F.R. § 41.51; 7 C.F.R. § 15b.4, in the following ways:

a. Defendants discriminated and continue to discriminate against Plaintiffs and members of the putative class by failing to provide reasonable modifications necessary for them to apply for, successfully obtain, and maintain eligibility for D-SNAP benefits, in violation of 29 U.S.C. § 794(a).

b. Defendants discriminated and continue to discriminate against Plaintiffs and members of the putative class by failing to (i) afford them such benefits in a manner that is equal to others; and (ii) provide them with benefits in a manner that is as effective in affording equal opportunity to obtain the same result, gain the same benefit and reach the same level of achievement as that provided to others, in violation of 28 C.F.R. § 41.51(b)(1)(ii)-(iii); 7 C.F.R. § 15b.4(b)(1)(ii)-(iii).

c. Defendants discriminated and continue to discriminate against Plaintiffs and members of the putative class by denying them access to benefits, in violation of 28 C.F.R. §§ 41.51(a) & 41.51(b)(1)(i)-(ii), (vii); 7 C.F.R. §§ 15b.4(a) & 15b.4(b)(1)(i)-(ii), (vii).

121. Defendants' conduct constitutes an ongoing and continuous violation of Section 504 of the Rehabilitation Act and unless restrained from doing so, Defendants will continue to violate said law. This conduct, unless enjoined, will continue to inflict injuries for which Plaintiffs have no adequate remedy at law. Plaintiffs will suffer irreparable harm in that they will continue to be discriminated against and denied access to D-SNAP benefits.

SECOND CLAIM

VIOLATIONS OF THE ADA BY DCF

122. Paragraphs 1 through 121 are incorporated by reference as if fully stated herein.

123. Title II of the ADA, 42 U.S.C. § 12132, prohibits a public entity from excluding a person with a disability from participating in or denying the benefits of a program of the public entity to a person with a disability or otherwise discriminating against a person on the basis of disability.

124. The ADA defines "disability" as a physical or mental impairment that substantially limits one or more of the major life activities of such individual; having a record of such impairment; or being regarded as having such impairment, as defined under the ADA at 42 U.S.C. § 12102(2)

and U.S. Department of Justice (“DOJ”) implementing regulations at 28 C.F.R. § 35.104.

125. Each individual Plaintiff and member of the putative class has at least one “disability” within the meaning of the ADA and implementing regulations. Each organizational plaintiff has members and constituents with at least one “disability” within the meaning of the ADA and implementing regulations.

126. A “public entity” includes state and local governments, their agencies, and their instrumentalities, as defined under the ADA, 42 U.S.C. § 12131(1).

127. DCF is a public entity within the meaning of 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104.

128. Each individual Plaintiff and member of the putative class is a “qualified individual with a disability” as defined under the ADA, 42 U.S.C. § 12131(2) and 28 C.F.R. § 35.104, because each person is an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. Each organizational

plaintiff has members and constituents who are “qualified individual[s] with a disability” as defined under the ADA, 42 U.S.C. § 12131(2) and 28 C.F.R. § 35.104.

129. By failing to plan to meet the needs of persons with disabilities during a disaster, Defendants discriminated and continue to discriminate against Plaintiffs and members of the putative class in violation of 42 U.S.C. § 12132 and the DOJ’s implementing regulations, 28 C.F.R. § 35.130, in the following ways:

- a. Defendants discriminated and continue to discriminate against Plaintiffs and members of the putative class by providing benefits in a manner which denies or limits the ability of disabled person to enjoy the benefits as others can, in violation of 28 C.F.R. § 35.130(b)(1).
- b. Defendants discriminated and continue to discriminate against Plaintiffs and members of the putative class by selecting sites that have the effect of excluding individuals with disabilities from, denying the benefits of, or otherwise subjecting them to discrimination, in violation of 28 C.F.R. § 35.130(b)(4).

c. Defendants discriminated and continue to discriminate against Plaintiffs and members of the putative class by failing to provide reasonable modifications necessary for them to apply for, successfully obtain, and maintain eligibility for benefits, in violation of 42 U.S.C. § 12112(b)(5)(A), 28 C.F.R. § 35.130(b)(7), and 28 C.F.R. § 35.130(b)(4).

130. Defendants' conduct constitutes an ongoing and continuous violation of the ADA and unless restrained from doing so, Defendants will continue to violate said law. This conduct, unless enjoined, will continue to inflict injuries for which Plaintiffs have no adequate remedy at law. Plaintiffs will suffer irreparable harm in that they will continue to be discriminated against and denied access to D-SNAP benefits.

THIRD CLAIM

VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT BY DEFENDANTS USDA AND PERDUE

131. Paragraphs 1 through 131 are incorporated by reference as if fully stated herein.

132. The action of Federal Defendants as alleged herein are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law in that:

Defendants USDA and PERDUE have approved DCF's Irma D-SNAP plan and have allowed and are allowing DCF to operate Irma D-SNAP despite its lack of accommodations for persons with disabilities who cannot travel to a FFF site in violation of the ADA and Section 504 of the Rehabilitation Act.

133. The action of Federal Defendants as alleged herein further violate 5 U.S.C. 706(1) in that Defendants USDA and PERDUE have unlawfully withheld agency action to which the plaintiff class is entitled and have not acted in accordance with law by maintaining the policies and practices as set forth herein which are in violation of the ADA and Section 504 of the Rehabilitation Act and the defendants' interpretive policies.

WHEREFORE, Plaintiffs request that this Court grant them the following relief:

- A. Assume jurisdiction of this matter.
- B. Certify this action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(2) with respect to the proposed class identified herein.
- C. Adjudge and declare that the policies, practices, omissions and conditions described above are in violation of the rights of Plaintiffs and the class they seek to represent under the Administrative

Procedures Act, 5 U.S.C. § 701 *et seq.*, the ADA, Section 504 of the Rehabilitation Act, and implementing regulations.

D. Preliminarily and permanently enjoin Defendants, their agents, employees and all persons acting in concert with them from discriminating against Plaintiffs and class members by requiring them to:

- a. accommodate all class members by allowing them alternatives to the in-person requirement, including but not limited to telephone, mail, internet, facsimile, and, when these methods are not viable, home visits, and extend the D-SNAP application period so that all class members may have an equivalent period of time to apply for D-SNAP once reasonable accommodations are implemented;
- b. provide adequate notice and instructions to disabled individuals regarding how to request an accommodation in advance of any future D-SNAP site openings, and retrospectively in any counties in which the D-SNAP sites have closed; and

- c. enjoin Defendants from closing the D-SNAP Program in Florida before qualified individuals with disabilities have had a reasonable opportunity to participate;
 - d. allow all class members the opportunity to apply and obtain D-SNAP benefits retroactively; or otherwise compensate all class members with equivalent SNAP benefits; and
- E. Order Defendants, their agents, employees, and all persons acting in concert with them, to ensure and make reasonable accommodations available to Plaintiffs and class members in a manner that allows them to apply for and comply with the conditions of eligibility for D-SNAP in the current Irma D-SNAP program.
- F. Award Plaintiffs the costs of this suit and reasonable attorneys' fees and litigation expenses.
- G. Retain jurisdiction of this case until Defendants have fully complied with the orders of this Court, and there is a reasonable assurance that Defendants will continue to comply in the future.
- H. Award such other and further relief as the Court deems just and proper.

Dated: November 2, 2017

The Plaintiffs

By their Attorneys,

/s/ Cindy Huddleston

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