

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
2006 JAN -4 PM 12:33
LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MANDY KIRK, ANNETTE DENSON,
GRETA A. GLADNEY, HOPE HOUSE
RAYMOND PARKER, JR., LOWER
NINTH WARD NEIGHBORHOOD
COUNCIL, NEW LIFE INTRACOASTAL
COMMUNITY DEVELOPMENT CORP.,
PEOPLES HURRICANE RELIEF FUND,
AND LOUISIANA ACORN

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CIVIL ACTION

NO: **06-0024**

SECTION:
**U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
MAG. 3**

VERSUS

MAG:

CITY OF NEW ORLEANS AND RAY
NAGIN

* * * * *

NOTICE OF REMOVAL OF CIVIL ACTION

Defendant, the City of New Orleans, alleges:

I.

That the City of New Orleans and Mayor Ray Nagin have been named defendants in a civil action originally filed on December 28, 2005 in the Civil District Court in and for the Parish of Orleans, Louisiana, Case No.05-13471, Division "I-14" entitled *Mandy Kirk, Annette Denson, Greta A. Gladney, Hope House, Raymond Parker, Jr., Lower Ninth Ward Neighborhood*

Fee \$ 250.00
Process _____
 Dktd _____
 CtRmDep _____
Doc. No _____

Council, New Life Intracoastal Community Development Corporation, Peoples Hurricane Relief Fund, and Louisiana ACORN, v. City of New Orleans and Ray Nagin.

II.

There appears to have been service made on the Defendants on December 28, 2005.

The City accepts this as true.

III.

This Court has original jurisdiction over this action based on a federal question pursuant to 28 U.S.C. § 1331. This action is one in that may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441(b) in that it arises under 42 U.S.C. §1983.

IV.

This is a civil action.

V.

This Court has venue over this suit in that the claim arose in the Eastern District of Louisiana. 28 U.S.C. § 1391.

VI.

Defendant herein wishes to remove this suit from the Civil District Court, Parish of Orleans, State of Louisiana, to this Court, under the authority of 28 U.S.C. § 1441 et seq.

VII.

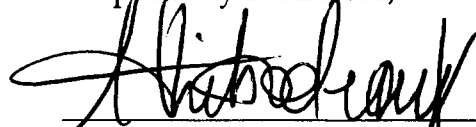
Attached as Exhibit "A" is a copy of the Petition for Temporary Restraining Order and Preliminary and Permanent Injunctive and Declaratory Relief and complete record filed in the state court proceeding.

VIII.

To the best of defendant's knowledge, no other documents have been filed in the state court proceeding.

WHEREFORE, defendant, file this notice to remove the action now pending in the Civil District Court, Parish of Orleans, State of Louisiana, from that Court to the United States District Court for the Eastern District of Louisiana.

Respectfully submitted,



ALBERT A. THIBODEAUX, LSB# 24895
Chief Deputy City Attorney
1300 Perdido Street
City Hall - 5th Floor
New Orleans, Louisiana 70112
(504) 658-9800

FRANK R. NICOTERA, LSB#09999
Chief Deputy City Attorney

PENYA MOSES-FIELDS, LSB# 24850
City Attorney

COUNSEL FOR DEFENDANTS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MANDY KIRK, ANNETTE DENSON,
GRETA A. GLADNEY, HOPE HOUSE
RAYMOND PARKER, JR., LOWER
NINTH WARD NEIGHBORHOOD
COUNCIL, NEW LIFE INTRACOASTAL
COMMUNITY DEVELOPMENT CORP.,
PEOPLES HURRICANE RELIEF FUND,
AND LOUISIANA ACORN

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CIVIL ACTION

NO:

SECTION:

VERSUS

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MAG:

CITY OF NEW ORLEANS AND RAY
NAGIN

* * * * *

CERTIFICATE PURSUANT TO 28 USC 1447(b)

NOW INTO COURT, through undersigned counsel, comes defendant, the City of
New Orleans, who submits the following certificate pursuant to 28 U.S.C. 1447(b):

1. ALL PARTIES AND ATTORNEYS

Party

Attorney

Mandy Kirk, Annette Denson,
Greta A. Gladney, Hope House
Raymond Parker, Jr., Lower
Ninth Ward Neighborhood

William P. Quigley, Bar #7769
R. Judson Mitchell, Jr. LSBA #23219
Loyola University New Orleans
School of Law

Council, New Life Intracoastal
Community Development
Corporation, Peoples Hurricane
Relief Fund, and Louisiana ACORN,
(Plaintiffs)

7214 St. Charles Avenue
New Orleans, La 70118

Judith Browne
Ishmael Muhammad
Miles Granderson
Advancement Project
1730 M. Street, NW, #910
Washington, DC 20036

Tracie L. Washington LSBA# 25925
P.O. Box 1507
New Orleans, La 70175

City of New Orleans
and Ray Nagin
(Defendants)

Albert A. Thibodeaux, LSB #24895
Frank R. Nicotera, LSB# 09999
City Hall - Room 5E01
1300 Perdido Street
New Orleans, Louisiana 70112
Telephone: (504) 658-9800

2. **COPIES OF ALL RECORDS AND PROCEEDINGS FILED IN STATE COURT**

A copy of the entire record filed in the State Court proceeding as of December 28, 2005 is attached hereto.

3. **A LIST OF ALL DOCUMENTS INCLUDED IN THE STATE COURT RECORD**

- a) Plaintiffs' Petition for Temporary Restraining Order and Preliminary and Permanent Injunctive and Declaratory Relief;
- b) Copy of Notice of Removal filed in State Court.

4. **CERTIFICATE BY COUNSEL AS TO CONTENT OF STATE RECORD**

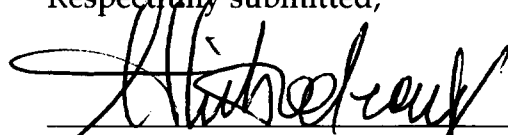
Undersigned counsel certifies that the attached record is the complete state court

record as of December 28, 2005, to the best of undersigned counsel's knowledge.

5. CERTIFICATE OF CONSENT

Undersigned counsel certifies that the undersigned represents all properly served parties defendant herein and that there are no other co-defendants named or served in connection with this matter of which undersigned counsel is aware and, further, that all named and properly served defendants herein have been notified of, and consent to the removal of this action.

Respectfully submitted,



ALBERT A. THIBODEAUX, LSB# 24895
Deputy Chief City Attorney
1300 Perdido Street
City Hall, 5th Floor
New Orleans, Louisiana 70112
(504) 658-9800

FRANK R. NICOTERA, LSB #09999
Chief Deputy City Attorney

PENYA MOSES-FIELDS, LSB# 24850
City Attorney

COUNSEL FOR DEFENDANTS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MANDY KIRK, ANNETTE DENSON,
GRETA A. GLADNEY, HOPE HOUSE
RAYMOND PARKER, JR., LOWER
NINTH WARD NEIGHBORHOOD
COUNCIL, NEW LIFE INTRACOASTAL
COMMUNITY DEVELOPMENT CORP.,
PEOPLES HURRICANE RELIEF FUND,
AND LOUISIANA ACORN

VERSUS

CITY OF NEW ORLEANS AND RAY
NAGIN

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CIVIL ACTION

NO: **06 - 0024**

SECTION:

SECT. F MAG. 3

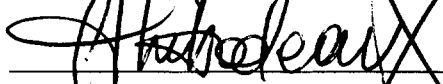
MAG:

TO: Mandy Kirk, et al.
THROUGH COUNSEL OF RECORD
William P. Quigley, Esq.,
Loyola University New Orleans School of Law
7214 St. Charles Avenue
New Orleans, Louisiana 70118

PLEASE TAKE NOTICE that on January 4, 2006, defendants herein filed a Notice of
Removal, a copy of which is attached, in the United States District Court for the Eastern
District of Louisiana.

DATED: January 4, 2006.

Respectfully submitted,



ALBERT A. THIBODEAUX, LSB# 24895
Chief Deputy City Attorney
1300 Perdido Street
City Hall - 5th Floor
New Orleans, Louisiana 70112
(504) 658-9800

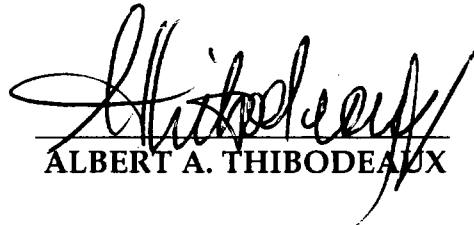
FRANK R. NICOTERA, LSB# 09999
Chief Deputy City Attorney

PENYA MOSES-FIELDS, LSB# 24850
City Attorney

COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served on all counsel and unrepresented parties by depositing same in the United States Mail, postage prepaid and properly addressed, this 4th day of January 2006.



ALBERT A. THIBODEAUX

FILED

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NUMBER: 2005-13470

DIVISION: I SECTION 14

Mandy Kirk, Annette Denson, Greta A. Gladney, Hope House, Raymond Parker, Jr., Lower Ninth Ward Neighborhood Council, New Life Intracoastal Community Development Corporation, Peoples Hurricane Relief Fund, and Louisiana ACORN, Petitioners

Versus

City of New Orleans and Ray Nagin, Defendants

Filed: _____ Deputy Clerk _____

CIVIL DISTRICT COURT 400 CENTRAL BANK BUILDING 421 LOUISIANA AVENUE NEW ORLEANS, LA 70112 504-582-9100

PETITION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND PERMANENT INJUNCTIVE AND DECLARATORY RELIEF

1 cc
12/29/05
JCC

This is a petition for declaratory and injunctive relief by residents and homeowners of the City of New Orleans against the City and the Mayor of New Orleans. Defendants have announced plans to immediately begin demolition of 2500 homes and buildings without permission of the owners or without securing legal authority. Another 3000 buildings and homes are also slated for demolition after the first 2500 are destroyed. These buildings have red stickers, which were placed there by private contractors who have never been given legal authority to take such action for the City of New Orleans. Many of the buildings are mistakenly marked and evaluated. The people and organizations involved seek to prevent any demolition of any homes or residences in the City of New Orleans without prior adequate notice, a full and meaningful adversarial judicial hearing and all other elements of due process in accordance with the US Constitution, Fifth and Fourteenth Amendments and Sections 2 and 4(a) of the Constitution of the State of Louisiana.

12/28/05 06 13:17
Total Due \$ 307.50
Check Amount \$ 307.50
Balance Due \$ 0.00

I.

Petitioners in this matter are:

(a) Mandy Kirk is a resident of New Orleans who has lived in her home since 1951. Ms. Kirk has owned her home at 2215 Caffin Avenue since 1951. Her home was damaged during and after Hurricane Katrina. Ms. Kirk wants to rebuild her home. Ms. Kirk is currently involved in a dispute between her homeowners and flood insurance companies over who is

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12/28/05
12:13 PM
CLERK

responsible for what part of the damage to her home. Her home has a red sticker on it. Ms. Kirk has never been contacted by the City of New Orleans. There is no information available about this location on the City of New Orleans Damage Assessment site. Ms. Kirk is currently displaced in Houston, TX.

(b) Annette Denson is a resident of New Orleans who has lived in her home at 5619 N. Miro since the 1950s. Her home was damaged during and after Hurricane Katrina. Ms. Denson wants to rebuild her home. Ms. Denson is currently involved in a dispute between her homeowners and flood insurance companies over who is responsible for what part of the damage to her home. Her home has a red sticker on it. Ms. Denson has never been contacted by the City of New Orleans. There is no information available about this location on the City of New Orleans Damage Assessment site. Ms. Denson is currently displaced in Houston, TX.

(c) Greta A. Gladney is a resident of New Orleans who has lived at her home at 820 Jordan for the last 11 years. Her home was damaged during and after Hurricane Katrina. Ms. Gladney, who is a member of Louisiana ACORN, has already started to rebuild her home. Her home has a red sticker on it. Ms. Gladney has never been contacted by the City of New Orleans. There is no information available about this location on the City of New Orleans Damage Assessment site. The red sticker on this home is apparently an error.

(d) Hope House is a Louisiana non-profit corporation that owns a building at 919 St. Andrew in the Irish Channel area of New Orleans. The building is used as an adult learning center. A red sticker was placed on their building. After the red sticker was placed on the building, officials from the Corps of Engineers came out and inspected the building and put a blue tarp on the roof of the building. Corps employees said that they could not see why anyone would have put a red sticker on the building. The building has been in constant use since then and is in functional condition. There is no information available about this location on the City of New Orleans Damage Assessment site. The red sticker on this building is apparently an error.

(e) Raymond Parker, Jr. owns his home at 1815 Andry. His home is seriously damaged but there is no sticker on his house at all. Mr. Parker fears that the City's announced intention to demolish homes without notice may include his home but has not been contacted by the City of New Orleans so he does not know. Mr. Parker is currently displaced in Jackson, Mississippi.

(f) The Lower Ninth Ward Neighborhood Council is made up of residents of the lower

ninth ward. Its members include many people who have red stickers on their homes. It represents the interests of its members and joins this action to make sure that no person's property is demolished in error, without their consent, or without a hearing and full legal due process.

(g) New Life Intracoastal Community Development Corporation, appearing through Willie L. Calhoun, Jr., is made up of members of the lower ninth ward of New Orleans who work to increase home ownership and economic development in the neighborhood. Its members include many people who have red stickers on their homes. It represents the interests of its members and joins this action to make sure that no person's property is demolished in error, without their consent, or without a hearing and full legal due process.

(h) The Peoples Hurricane Relief Fund is a network of community leaders, organizers and community based organizations working to meet the needs of people most affected by Hurricane Katrina, to facilitate an organizing process that demands local, grassroots leadership in the relief, return and reconstruction of New Orleans and the Gulf Coast. Its members include many people who have red stickers on their homes.

(i) Louisiana ACORN, the Association of Communities for Reform Now, New Orleans chapter, is an association of low and moderate income people in Orleans Parish. Its members include many people who have red stickers on their homes. It represents the interests of its members and joins this action to make sure that no person's property is demolished in error, without their consent, or without a hearing and full legal due process.

II.

Defendants in this matter are:

(a) the City of New Orleans, a municipal corporation of Louisiana;

(b) Ray Nagin is the Mayor and chief executive officer of the City of New Orleans and is legally responsible for the actions and inactions of the employees, agents and contractors of the City of New Orleans as described in this petition.

All defendants are sued in their official capacity as they are acting under color of law.

III.

Due to winds, rains and flooding that occurred during and after Hurricanes Katrina and Rita, over one hundred thousand homes and residences in the city of New Orleans suffered

damage. Homes and residences in the City of New Orleans were severely flooded and homes and submerged in several feet of water for prolonged periods of time.

IV.

Petitioners are the owners or legal occupants of these homes and buildings and insist on their constitutional rights to make their own independent decisions about their own property without the continuing threat of unconstitutional and illegal action by defendants.

V.

Petitioners were prohibited from even visually inspecting or visiting their homes for weeks by orders of defendants of questionable legality that were enforced by law enforcement and military personnel.

VI.

Defendants have contracted with private companies to inspect buildings in New Orleans and these private inspectors have categorized approximately 5500 buildings as needing to be demolished and have attached red stickers to those buildings.

VII.

Agents and employees of defendants have just advised members of the community and the media that they are plan to immediately bulldoze and demolish 2500 red sticker homes and buildings in the city of New Orleans without the consent of the owners and without any legal proceedings at all. This was stated in the Times-Picayune on December 24, 2005 by City employee Greg Meffert described as acting supervisor of safety and permits for defendants. Defendants now describe this wholesale demolition plan as a necessity because of "emergency" concerns about public safety, public health and public welfare despite the fact that every single one of these buildings has been sitting there for 4 months already. Defendants have not denied this plan to demolish 2500 properties without permission of the owners or legal proceedings.

VIII.

The actions of defendants are unlawful for several reasons, any one of which demands that defendants be stopped. These reasons include: there is no statutory authority for the defendants to demolish any property on the basis of inspections by private contractors; defendants actions violate several of their own publicly published rules and regulations about demolition; there are not now all of a sudden 2500 "emergencies" in the City which authorize

demolition without due process; there are obvious mistakes in the process used by the City; and, in addition to all of the above, the actions and inactions of defendants violate the US and Louisiana Constitutional promises of due process before any life, liberty or property can be taken or destroyed.

IX.

There is no provision in Louisiana or New Orleans statutes or codes which allow the demolition of any building based upon a conclusion of a private inspector without notice to the owner and opportunity for the owner to be heard. Defendants do not have the authority to demolish any building in this manner. Thus, this action is without any legal basis at all and must be stopped.

X.

Further, defendants' actions violate their own rules, regulations and public promises to the residents of New Orleans. The City of New Orleans advises city residents, on the City's own website, that: "The stickers do not represent whether or not a building will be demolished. Demolition will be determined through a separate process between the City and the home owner." Defendants violate their own rules, regulations and public promises and are without legal basis and must be stopped.

XI.

Later on the City's website, defendants again state: "Q: Who will decide whether my home is to be demolished? A: Parish officials said that in most cases property owners will decide. Professional building inspectors will evaluate each property and report to the Parish Council and administrators, who will recommend to the owner whether the property should be demolished. All demolition will require permission from the property owner, unless an owner is negligent in responding to attempts to reach the owner. Owners will not have to wait for the inspection to start rebuilding, but must obtain necessary permits." Defendants violate their own rules, regulations and public promises and are without legal basis and must be stopped.

XII.

Despite these rules, regulations, and promises posted by the City, the New Orleans City Council has not received evaluations or recommendations that 2500 homes are to be demolished nor have the owners. Permission has not been sought nor granted. No administrative or legal

proceedings have been initiated. No owners have been given any legal process at all, much less constitutionally required due process. Defendants violate their own rules, regulations and public promises and are without legal basis and must be stopped.

XIII.

The City of New Orleans itself publicly questions the reliability of the assessments of residences conducted by the private contractors. Their website further states: "The City of New Orleans provides the following Damage Assessment Tool to assist citizens in determining what steps will be necessary to repair and renovate structures damaged during Hurricanes Katrina and Rita. This tool is offered using the best available data and resources to offer accurate options for the majority of scenarios facing local property owners and renters. Although it is believed that this information is generally correct, the City does not assume any responsibility whatsoever for its accuracy. Users of this information do so at their own risk. The City assumes no obligation to provide support, maintenance or updates of this information. The City expressly disclaims all warranties, expressed or implied, of the accuracy of the information contained in this list, and that such information may be used for any particular purpose. Readers of this list are cautioned that it is their responsibility to verify the accuracy of this information from all available alternative sources. In no event shall the City be liable for any injury, expense, profit, loss or damage, direct, incidental or consequential, or any other pecuniary loss arising out of the use of this list by any person, firm or other entity." Because the City does not assert that the information about the assessment program is totally accurate, there is no way that information can legally provide the basis for unilateral demolition of 2500 homes and buildings without permission of the owners or due process legal proceedings.

XIV.

As a matter of law, there are not now, all of a sudden, 2500 "emergencies" in the City of New Orleans that would justify unilateral demolition by the City without permission or due process based on inspections by private contractors.

XV.

Defendants' actions are in many cases mistaken. There are numerous buildings in the City of New Orleans which have red tags attached to them which are not at all appropriate for demolition. These mistakes, not uncommon in a collection of 5500 decisions, are facts which

again shows the importance of securing the permission of the owners or conducting due process hearings.

XVI.

None of the current plans to bulldoze or demolish homes have included giving the owners and renters of these homes a prior opportunity to be heard in an open and adversarial judicial proceeding with all the procedural and substantive rights that are due under the due process clauses of the Fifth and Fourteenth Amendments to the US Constitution and Article 1, Sections 2 and 4(b) of the Louisiana Constitution. Defendants actions and inactions violate the US and Louisiana Constitution and must be stopped.

XVII.

Petitioners want and are entitled to participate in the decisions about their property and will suffer irreparable injury if defendants are allowed to proceed to bulldoze or destroy their homes and buildings without the benefit of all constitutional and statutory rights under due process of law prior to any action being taken.

XVIII.

Cause of Action: US Constitution. The actions and inactions of defendants and their agents and employees detailed above violate the rights to procedural and substantive due process under the Fifth and Fourteenth Amendments to the US Constitution and 42 USC 1983.

XIX.

Cause of Action: Louisiana Constitution. The actions and inactions of defendants and their agents and employees detailed above violate the procedural and substantive due process rights of plaintiffs under the Louisiana Constitution, Article 1, Sections 2 and 4(b). Article 1, Section 2 says: No person shall be deprived of life, liberty or property, except by due process of law. Article 1, Section 4(b) says: Property shall not be taken or damaged by the state or its political subdivisions except for public purposes with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question. In every expropriation, a party has the right to trial by jury to determine compensation, and the owner shall be compensated to the full extent of the loss.

XX.

Causes of Action: Additionally, the actions and inactions of defendants and their agents and employees detailed above are unlawful for several reasons, any one of which demands that defendants be stopped. These reasons include: there is no statutory authority for the defendants to demolish any property on the basis of inspections by private contractors; defendants actions violate several of their own publicly published rules and regulations about demolition; there are not now all of a sudden 2500 "emergencies" in the City which authorize demolition without due process; and there are obvious mistakes in the process used by the City.

XXI.

Relief Sought: Petitioners seek the following relief from this Court:

(a) Issue an immediate temporary restraining order directing defendants and all their agents and employees to immediately cease and desist from taking any actions whatsoever to demolish any homes or buildings in the City of New Orleans without either securing the permission of the owners or providing the owners or legal occupants of these homes with full due process proceedings including adequate notice, a meaningful opportunity to be heard in an adversarial hearing, and all other rights of procedural and substantive due process before their homes or buildings are demolished;

(b) After appropriate hearing of all parties in this matter issue a preliminary then a permanent injunction ordering defendants and all their agents and employees to cease and desist from taking any actions whatsoever to demolish any homes or apartments in the City of New Orleans without first securing permission from the owners or providing the owners of these homes and buildings with full due process proceedings including adequate notice, a meaningful opportunity to be heard in an adversarial hearing, and all other rights of procedural and substantive due process before their homes are demolished;

(c) Determine and declare that the actions of defendants complained of in this matter are violations of the due process rights secured under the Fifth and Fourteenth Amendments to the US Constitution and Article 1, sections 2 and 4(b) of the Louisiana Constitution;

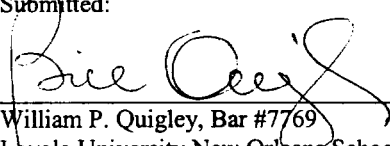
(d) Order all other appropriate relief necessary in order to protect the constitutional rights of plaintiffs;

(e) Because of the size of this problem and the difficulties of communication in the City

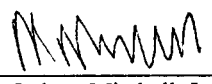
of New Orleans, this Court should appoint a court-ordered expert to monitor any plans for demolition of homes in the City of New Orleans and to issue to this court regular and periodic reports on the compliance with the constitutionally protected due process rights of plaintiffs.

(f) Petitioners request all other relief that is just and appropriate.

Submitted:



William P. Quigley, Bar #7769
Loyola University New Orleans School of Law
7214 St. Charles Avenue
New Orleans, LA 70118
duprestars@yahoo.com
Temporary phone: 832.489.6408

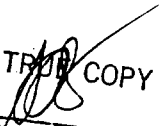


R. Judson Mitchell, Jr. LSBA #23219
Loyola University New Orleans School of Law
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New Orleans, LA 70118
jmitchel@loyno.edu
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Tracie L. Washington, LSBA #25925
New Orleans, LA

Judith Browne
Ishmael Muhammad
Miles Granderson
Advancement Project
1730 M. Street, NW, #910
Washington, DC 20036
202.728.9557

Please serve defendants through the City Attorney's Office


A TRUE COPY

DEPUTY CLERK, CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA.

STATE OF LOUISIANA *
*
PARISH OF ORLEANS *

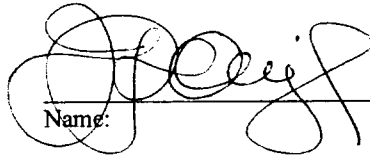
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2005 DEC 28 A 11:17
CIVIL
DISTRICT COURT


VERIFICATION

BEFORE ME, the undersigned Notary Public in and for the parish aforesaid, did personally come and appear the undersigned, who after being duly sworn , did depose and state:

The undersigned swears that the facts in this petition are true and accurate to the best of my knowledge. Undersigned counsel contacted the City Attorney's office to let them know this pleading was coming.

New Orleans, Louisiana this 28 day of December, 2005.


Name: _____



Notary Public

R. JUDSON MITCHELL, JR.
NOTARY PUBLIC LSBA NO. 23219
MY COMMISSION EXPIRES AT DEATH

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

FILED
2005 DEC 28 A 11:17

NUMBER:

DIVISION: CIVIL
DISTRICT COURT

Mandy Kirk, Annette Denson, Greta A. Gladney, Hope House, Raymond Parker, Jr.,
Lower Ninth Ward Neighborhood Council, New Life Intracoastal Community
Development Corporation, Peoples Hurricane Relief Fund, and Louisiana ACORN,
Petitioners

Versus

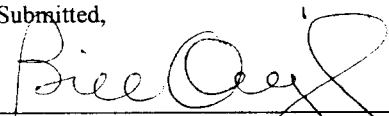
City of New Orleans and Ray Nagin,
Defendants

Filed: _____ Deputy Clerk _____

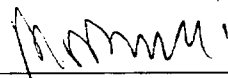
**MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

Now into court, through undersigned counsel, come the petitioners in this matter who respectfully request this court order a temporary restraining order, and after a full hearings in this matter, a preliminary injunction and a permanent injunction ordering the defendants to cease and desist from illegally demolishing any homes or buildings in Orleans Parish without the consent of the owners or without notice, a full opportunity to be heard and all due process protections due under the US and Louisiana Constitutions.

Submitted,



William P. Quigley, Bar #7769
Loyola University New Orleans School of Law
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duprestars@yahoo.com
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Judith Browne
Ishmael Muhammad
Miles Granderson
Advancement Project
1730 M. Street, NW, #910
Washington, DC 20036
202.728.9557

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

FILED
2005 DEC 28 AM 11:17

NUMBER: 2005 - 13471

DIVISION: CIVIL DISTRICT COURT 13471

Mandy Kirk, Annette Denson, Greta A. Gladney, Hope House, Raymond Parker, Jr.,
Lower Ninth Ward Neighborhood Council, New Life Intracoastal Community
Development Corporation, Peoples Hurricane Relief Fund, and Louisiana ACORN,
Petitioners

Versus

City of New Orleans and Ray Nagin,
Defendants

Filed: _____ Deputy Clerk _____

TEMPORARY RESTRAINING ORDER

DEC 29 2005
ENTERED ON MINUTES

After reviewing the verified petition in this matter and hearing arguments of counsel, IT IS HEREBY ORDERED that the City of New Orleans, its Mayor Ray Nagin, and all of its employees, agents and contractors, are hereby ordered to stop any and all demolitions of any homes or buildings with red stickers on them as a result of Hurricane Katrina or Rita or their aftermaths until and unless the owners give permission for such demolition or until and unless there is an opportunity for full due process for the owners.

In the interim, if indeed there are any buildings in the city that the city believes are in imminent danger of collapse and the City believes that constitutional pre-demolition notice and due process to the owner is not necessary because the City believes they are in fact emergencies and dangerous to the communities, the City must immediately and before demolition provide to this Court precise legal authority for allowing such demolition, evidence that there is in fact an emergency, the length of time that such emergency has existed, the efforts that the City has taken to notify the owner of the property that such an emergency exists, and why such action must be taken without notice to the owner of the property.

See Consent Judgment of 12/28/05. (HMC)
A hearing on the preliminary injunction requested by petitioners will be held before *Division I*

court on the 6th day of January, 2006 at 10:00 a.m.

Parties should contact Division I regarding the Provision of C.C.C. Article 3609.

Date: 12/28/2005 Judge: Alexander A. Cadop

A TRUE COPY

DEPUTY CLERK, CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA.

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

FILED
2005 DEC 28 A 11:17

NUMBER:

DIVISION: CIVIL DISTRICT COURT

Mandy Kirk, Annette Denson, Greta A. Gladney, Hope House, Raymond Parker, Jr., Lower Ninth Ward Neighborhood Council, New Life Intracoastal Community Development Corporation, Peoples Hurricane Relief Fund, and Louisiana ACORN, Petitioners

Versus

City of New Orleans and Ray Nagin, Defendants

Filed: _____ Deputy Clerk _____

MEMORANDUM IN SUPPORT OF INJUNCTIVE AND DECLARATORY RELIEF

This memorandum of law outlines why the impending demolition of 2500 homes by the City of New Orleans should be immediately stopped and enjoined as violating the US and Louisiana Constitutions. The demolitions also violate the City's own declarations about the categorizing of homes. All demolitions must cease until and unless the City of New Orleans follows due process of law.

INTRODUCTION

Greg Meffert, on behalf of the City of New Orleans, announced in the Times-Picayune on December 24, 2005 that "about 2500" homes in the City "will be demolished immediately" because after an initial inspection they pose an imminent public hazard. The City reported another 3000 homes would be inspected a second time to verify they must be torn down.

DEMOLITIONS VIOLATE CITY RULES AND REGULATIONS

In addition to the violations of the US and Louisiana Constitutions, which are discussed later in this memorandum, the City plan to demolish thousands of homes and buildings violates their own stated rules and regulations.

The City has announced the immediate demolition of 2500 homes despite explicit promises to homeowners.

The City has posted on the Internet the following: City of New Orleans Expedited Permit Process: <http://www.cityofno.com/portal.aspx?portal=1&tabid=54> The City states there:

"As you return to your home in the aftermath of Hurricane Katrina, please make note of the following procedures the City of New Orleans has implemented to advise and assist property owners in the New Orleans area of what steps to take if a home flooded or sustained damage from Hurricane Katrina. The City of New Orleans will continue to work with citizens and property owners to help expedite permitting and inspections on damaged properties in all

possible cases. For more information contact the City of New Orleans information line at (877) 286-6431 or the Department of Safety & Permits at (504) 658-7100.

“The City of New Orleans has streamlined our permitting requirements in order to expedite the recovery process. Most permits can be issued online or over the counter at the Safety and Permits offices. Permit requirements will be based on where the property is located and the damage it sustained from the storms. Each structure has been or will be reviewed by Safety & Permits officials to determine the level of damage. Please use the guidelines below to determine what the next steps to take are for your individual property.

“Damage Inspection Notices

GREEN: Building is safe to enter and lawful occupancy permitted.

YELLOW: Building has partial structural damage and/or falling non-structural hazards may be present. Building may or may not be habitable; partial occupancy is permitted per noted restrictions.

RED: Building is unsafe to enter and its occupancy has been prohibited by the local building department. The building is structurally unstable and may possibly collapse from static conditions, wind, or other events.

“The stickers do not represent whether or not a building will be demolished. Demolition will be determined through a separate process between the City and the home owner.” [Emphasis is on City website].

..... [Later on same site]

“Q: Why do some homes have yellow and red stickers on them? Are green stickers being posted?

“A: No green stickers are being posted on buildings. Homes which have been inspected and are deemed safe warrant a green designation, however, this information is only being recorded electronically through the City’s home inspection program.

“Homes which have been flooded and have a special safety hazard have been “tagged” with either a yellow or red 5-1/2” x 8-1/2” City of New Orleans Department of Safety and Permits sticker.

“A yellow sticker means that the building has partial structural damage and/or a falling non-structural hazard may be present. Only some yellow stickers are being posted; the vast majority of homes designated as yellow have been flooded but do not have structural damage, therefore a sticker is not required.

“Under a yellow, partial structural damage has occurred to only a relatively small portion of the building; the majority of the building is still structurally stable. An example is a home where the roof gable is damaged at one end, but rest of building is okay. Examples of non-structural hazards include leaning porch roofs/canopies with damaged supports, light trees or well supported trees leaning on homes, loose cladding which can fall from a significant height, etc.

"A red sticker means that the building is unsafe to enter or occupy due to a serious structural deficiency and/or the presence of a significant life threatening hazard, such as a large tree which is leaning towards a house or a downed live electrical line. Significant structural damage may possibly lead to building collapse and is therefore unsafe to enter or occupy. The yellow and red stickers are meant to warn residents of potential safety hazards on their properties and to inform them whether or not it is safe to enter or occupy their homes.

"The stickers do not represent whether or not a building will be demolished. Demolition will be determined through a separate process between the City and the home owner." [Emphasis on the City of New Orleans website].

"Q: Who will decide whether my home is to be demolished?"

"A: Parish officials said that in most cases property owners will decide. Professional building inspectors will evaluate each property and report to the Parish Council and administrators, who will recommend to the owner whether the property should be demolished. All demolition will require permission from the property owner, unless an owner is negligent in responding to attempts to reach the owner. Owners will not have to wait for the inspection to start rebuilding, but must obtain necessary permits. [Emphasis supplied by undersigned].

Needless to say, the New Orleans City Council has not received these evaluations and recommendations nor have the homeowners. Permission has not been sought nor granted. No administrative or legal proceedings have been initiated.

No homeowners have been given any legal process at all, much less constitutionally required due process.

THERE IS NO STATUTORY AUTHORITY FOR UNILATERAL DEMOLITION AFTER INSPECTION BY PRIVATE CONTRACTORS

There is no provision in City or State law which allows unilateral demolition of property after inspection by private contractors without consent of owners or without due process hearings. Indeed demolition, because it is such a serious action, as a matter of law, almost always takes place only with permission or after inspection, notice to owner, an opportunity for a hearing with legal counsel, a decision by an impartial arbiter, and opportunity for an appeal. Because there is no precise statutory authorization for unilateral demolition without due process, the demolitions must be halted until due process protections are fulfilled.

UNILATERAL DEMOLITION OF THOUSANDS OF HOMES CANNOT GO FORWARD
UNDER UNILATERAL DECISIONS BY DEFENDANTS BASED ON INSPECTIONS BY
PRIVATE CONTRACTORS THAT THOUSANDS OF "EMERGENCIES" EXIST ON
PROPERTIES THAT HAVE BEEN IN SUCH CONDITION FOR FOUR MONTHS

As a matter of law, the defendants cannot now, after these homes have been standing for

four months, declare that thousands of homes are in such condition that "emergencies" exist that would suspend the protections of the Louisiana and US Constitutions.

DEMOLITION OF THOUSANDS OF HOMES WITHOUT CONSENT, NOTICE OR
HEARING VIOLATES THE U.S. CONSTITUTION

Apart from the City violating its own stated rules, the Fifth and Fourteenth Amendments to the U.S. Constitution prohibit the taking of property without due process of law. There can be no disputing that the announcement that the City will begin "immediately" to demolish the homes of approximately 2500 families constitutes a taking of their property.

The Fourteenth Amendment prohibits the government from depriving "any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. This guarantee affords procedural protections. Daniels v. Williams, 474 U.S. 327, 331-32, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986). The government must give reasonable notice to an individual of its intention to deprive him of life, liberty, or property. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313-15, 70 S.Ct. 652, 94 L.Ed. 865 (1950). It also must provide him with a meaningful opportunity to be heard. Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976); Mullane, 339 U.S. at 313-14, 70 S.Ct. 652. "Following Mathews, we assess what process is due by considering and balancing three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Mathews, 424 U.S. at 335, 96 S.Ct. 893. This approach reflects the fact that "due process is flexible and calls for such procedural protections as the particular situation demands." Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972); accord Faulder v. Texas Bd. of Pardons & Paroles, 178 F.3d 343, 345 (5th Cir.) (per curiam) ("Procedural due process is an inherently flexible concept."), cert. denied, 527 U.S. 1017, 119 S.Ct. 2362, 144 L.Ed.2d 767 (1999). Applying the three-factor Mathews test, we usually hold that the individual must be heard prior to the deprivation. See Zinermon v. Burch, 494 U.S. 113, 127-28, 110 S.Ct. 975, 984, 108 L.Ed.2d 100 (1990). However, when pre-deprivation procedural safeguards cannot be expected to protect against the type of deprivation involved, we find that a post-deprivation hearing satisfies due process. See id. at 128-30, 139, 110 S.Ct. at 984-85, 990.

The basics of due process are simply summarized by Professors Rotunda and Nowak in their TREATISE ON CONSTITUTIONAL LAW: Substance and Procedure, Third Edition, Volume 3, Chapter 17.8, page 87 as follows: "The essential elements of due process are: (1) adequate notice of the charge or basis for governmental action; (2) a neutral decision maker; (3) an opportunity to make an oral presentation to the decision-maker; (4) an opportunity to present evidence or witnesses to the decision-maker; (5) a chance to confront and cross-examine witnesses or evidence to be used against the individual; (6) the right to have an attorney present

the individual's case to the decision-maker; (7) a decision based on the record with a statement of reasons for the decision."

The City has not sought permission or initiated any legal proceedings at all for people whose property is subject to the immediate demolition by the City. The City argues that it has the right to demolish these properties without any pre-demolition hearing because private contractors have determined them to pose an imminent public hazard. Despite the fact that many of these properties have been in the same condition for approximately four months, the City offers no reason to ignore the due process rights of the Constitution.

There is no doubt that hundreds of properties in the City of New Orleans will have to be demolished.

However, as the City recognizes on its own website, the City of New Orleans need either the permission of the property owner to demolish their home or to comply with due process before destroying anyone's home. Good intentions by the City are not sufficient.

Over 130 years ago, the U.S. Supreme Court ruled that good intentions by a city do not entitle it to exempt itself from the due process requirements of the Constitution. Yates v. Milwaukee, 10 Wall. 497, 77 U.S. 497, 505, 19 L.Ed. 984 (1870):

"It is a doctrine not to be tolerated in this country, that a municipal corporation, without any general laws either of the city or of the State, within which a given structure can be shown to be a nuisance, can, by its mere declaration that it is one, subject it to removal by any person supposed to be aggrieved, or even by the city itself." Other courts have agreed, again for over 100 years. Hennessy v. St. Paul, 37 F. 565, 566 (C.C.D.Minn.1889): "[U]nless a nuisance, as defined by the common law or by statute, exists, the act of the common council cannot make it one by a mere resolution. Such a doctrine might place the property of the people, no matter what in fact might be its real condition and character, at the disposal of the common council, without compensation."

Numerous similar cases on this matter are collected at 14 A.L.R.2d 73, "Constitutional Rights of Owner As Against Destruction of Building by Public Authorities." For example, "Although it is elementary that an owner of property has no constitutional right to maintain it as a public nuisance, it is equally elementary that he has a clear constitutional right to have it determined by due process whether in fact and law it is such a nuisance. As against this right, no ex parte declaration, however formal, by municipal authorities that it is a nuisance is final against him. It is said that even at common law a city or town has power to abate a public nuisance. Usually it has statutory power, vested in its governing body, to declare and abate public nuisances. But neither at common law nor under such express power can it, by its mere declaration that specified property is a nuisance, make it one when in fact it is not."

Cases cited in the ALR annotation include:

"Where building was administratively determined to constitute danger to life and health, and order directing owner to commence demolition or to secure building within 24 hours was served by posting on subject building and by mailing to owner, building was taken and demolished without owner being given adequate notice and reasonable opportunity to be heard,

and procedure followed by city was flagrant violation of due process of law, absent emergency situation.” New York v Unsafe Bldg. & Structure, 77 Misc 2d 562, 354 NYS2d 278.

”An officer who destroys private property in abating what legislative or administrative officials have determined to be public nuisance does so at his peril, absent prior judicial determination that the property is nuisance or an opportunity given to owner for administrative hearing with judicial review.” Solly v Toledo, 7 Ohio St 2d 16, 36 Ohio Ops 2d 9, 218 NE2d 463 (citing annotation).

”Where municipal corporation razed building, claiming it constituted public nuisance, without first giving owner thereof notice of such intent and full opportunity for administrative hearing, burden is upon municipal corporation to prove that building constituted public nuisance and that razing thereof was reasonably necessary to abate such nuisance.” Jackson v Columbus, 41 Ohio App 2d 90, 70 Ohio Ops 2d 92, 322 NE2d 283.

”Municipal ordinance which was part of zoning code and declared any service station continuously vacant for period of six months to be public nuisance and provided for its destruction without first allowing hearing to owner of property was unreasonable, arbitrary, and unconstitutional as depriving owner of property without due process of law. Marathon Oil Co. v Bd. of Zoning Adjustment, 44 Ohio App 2d 402, 73 Ohio Ops 2d 525, 339 NE2d 856.

”Owners are entitled to judicial determination of question whether their properties are in fact public nuisances.” State ex rel. Schulman v Cleveland (CP) 8 Ohio Misc 1, 37 Ohio Ops 2d 12, 220 NE2d 386 (citing annotation).

The actions and inactions of defendants violate the due process guarantees of the US Constitution.

DEMOLITION OF THOUSANDS OF HOMES WITHOUT CONSENT, NOTICE OR HEARING VIOLATES THE LOUISIANA CONSTITUTION

Mongogna v. O'Dwyer, 204 La. 1030, 16 So.2d 829, 833, La. 194 (December 13, 1943):
”The essential elements of due process of law are notice and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case.”

The actions of the City also violate the Louisiana Constitution, Article 1, Sections 2 and 4(b).

Article 1, Section 2 says: No person shall be deprived of life, liberty or property, except by due process of law.”

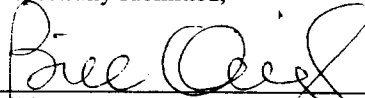
Article 1, Section 4(b) says: ”Property shall not be taken or damaged by the state or its political subdivisions except for public purposes with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question. In every expropriation, a party has the right to trial by jury to determine compensation, and the owner shall be compensated to the full extent of the loss.”

All the demolitions without consent, notice or hearing violate the express provisions of the Louisiana Constitution.

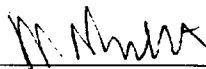
CONCLUSION

The temporary restraining order and preliminary and permanent injunctions and declaratory relief needs to be issued to protect not only the 2500 homes of citizens of New Orleans but the US and Louisiana Constitutions and the due process of law they require.

Respectfully submitted,



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CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NUMBER: 2005-13471

DIV: I-14

MANDY KIRK, ANNETTE DENSON, GRETA A. GLADNEY,
HOPE HOUSE, RAYMOND PARKER, JR.,
LOWER NINTH WARD NEIGHBORHOOD COUNCIL,
NEW LIFE INTRACOASTAL COMMUNITY
DEVELOPMENT CORPORATION,
PEOPLES HURRICANE RELIEF FUND, AND LOUISIANA ACORN,
PETITIONERS

VS.

CITY OF NEW ORLEANS AND RAY NAGIN,
DEFENDANTS

FILED: _____

DEPUTY CLERK

CONSENT JUDGMENT


Appearances:

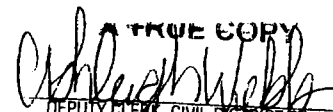
Bill Quigley
R. Judson Mitchell, Jr.
Tracie L. Washington
For the Petitioners

Brenda M. Breaux
Albert Thibodeaux
For the Defendants

The parties appeared before the Court on this 28th day of December, 2005 and all parties agreed that no demolitions of property in the City of New Orleans will be conducted by the defendants before the preliminary injunction hearing, which is set for January 6, 2006.

New Orleans, Louisiana this 28th day of December, 2005.


JUDGE


A TRUE COPY
DEPUTY CLERK, CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

FILED
2006 JAN -4 A 8:44

NUMBER: 2005-13471

CIVIL DISTRICT DIVISION: I

MANDY KIRK, et al., Petitioners

Versus

CITY OF NEW ORLEANS AND RAY NAGIN,
Defendants

FILED: _____
DEPUTY CLERK

FIRST AMENDED PETITION

NOW INTO COURT, through undersigned counsel, come Mandy Kirk, Annette Denson, Greta A. Gladney, Hope House, Raymond Parker, Jr., Lower Ninth Ward Neighborhood Council, New Life Intracoastal Community Development Corporation, Peoples Hurricane Relief Fund, and Louisiana ACORN (hereinafter Original Petitioners). Original Petitioners hereby supplement, amend and re-state their Original Petition filed in this matter as follows, in accordance with Article 1151 of the Louisiana Code of Civil Procedure:

I.

All allegations and other statements made in Paragraphs I-XXI of Plaintiffs' Original Petition, as well as in the prayers for relief contained therein, are hereby re-affirmed, re-alleged and requested as if copied herein word for word.

II.

Paragraph I of Petitioners' Original Petition shall be amended to add the following plaintiffs:

(j) Calvin Turnbough is a life long resident of New Orleans. Prior to Hurricane Katrina, Mr. Turnbough lived all his life - 48 years at 2345 Andry Street. Mr. Turnbough's father - Henry Smith - bought the land and built the house at 2345 Andry over 50 years ago. Mr. Turnbough understands his home was completely devastated by Hurricane Katrina and its after effects. But he also understands that even after the ravages of Hurricane Betsy 40 years ago, his family rebuilt on their house, and he wants that same opportunity or, at the very least, notice of what will happen to his property and his land. Defendants have

failed to provide this notice, despite the fact that Mr. Turnbough returned to New Orleans and spray painted name, current address and telephone number on the house.

(k) Joyce Smoot is 68 years old and a life-long resident of New Orleans. Mrs. Smoot lived in her house at 1219 Gordon Street for 31 years, where she and her husband raised four children. Mrs. Smoot owns her home and would like to return to New Orleans and to her home if at all possible, having now received some recompense from her insurance carriers. Mrs. Smoot has never been contacted by the City of New Orleans, but all of her current contact information is readily available to the City through the U.S. Postal Service, which has been forwarding mail to Mrs. Smoot in Houston, Texas, and through FEMA, which has Mrs. Smoot's current address, and telephone number.

(l) Charles Napoleon lives at 1227 Tupelo and has lived there for 17 years. He has gutted his home and plans to live in it again.

(m) Litanía and Bobby Banks own their home at 2518 Charbonnet and have lived there for 6 years. They evacuated to Alabama. They want to return to their home and want to fix up their home.

(n) Common Ground is an association of volunteers and survivors of Katrina who are living and working in many neighborhoods of New Orleans including the Lower Ninth Ward.

III.

Paragraph Ia is added to the original petition and, as amended, it states:

Ia.

This matter is filed as a class action, pursuant to Articles 591 and the following of the Louisiana Code of Civil Procedure, on behalf of all people in the City of New Orleans who now face or may in the future face demolition of their homes or residences by defendants without prior consent or notice or due process. The estimated size of the class is over 5500 persons, making joinder impracticable. Members of the class face common questions of fact and law, particularly their rights to due process of law as guaranteed by the US and Louisiana Constitutions. All persons in this class facing the possibility of unilateral demolition by defendants are entitled to due process, thus their claims and defenses are typical of those of the

rest of the class. The representative parties include a variety of homeowners in the City and a number of community organizations – all of which will fairly and adequately protect the interests of the class to their rights under the US and Louisiana Constitution.

1b.

Defendants have announced they will begin demolition of homes without notice, consent, or due process within one to four weeks.


IV.

All prayers for relief contained in the Original Petition are hereby re-alleged as if pled herein word for word.

Date: January 4, 2005

Respectfully submitted:

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STATE OF LOUISIANA *
*
PARISH OF ORLEANS *

VERIFICATION

BEFORE ME, the undersigned Notary Public in and for the parish aforesaid, did personally come and appear the undersigned, who after being duly sworn, did depose and state:

The undersigned swears that the facts in this amended petition are true and accurate to the best of my knowledge. Undersigned counsel contacted the City Attorney's office to let them know this pleading was coming.

New Orleans, Louisiana this 4 day of January, 2006.


WILLIAM P. QUIGLEY


Notary Public

R. JUDSON MITCHELL, JR.
NOTARY PUBLIC LSBA NO. 23219
MY COMMISSION EXPIRES AT DEATH

CERTIFICATE OF SERVICE

I, R. JUDSON MITCHELL, JR., do hereby certify that I have served a copy of the forgoing pleading on all parties via hand delivery this 4th day of January, 2006.



R. JUDSON MITCHELL, JR.