

## CAUGHT IN THE EYE OF THE STORM: THE DISPROPORTIONATE IMPACT OF NATURAL DISASTERS ON THE ELDERLY POPULATION IN THE UNITED STATES

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*Natural disasters have a disproportionate impact on the elderly. The federal government initiated a top-down system of emergency response after the September 11th attacks, but the current emergency response system does not sufficiently address the vulnerable condition elderly individuals are left in after a natural disaster. With elderly individuals over the age of sixty representing 71% of the fatalities in Hurricane Katrina, the United States' emergency response system does not adequately address this issue.*

*The physical and mental conditions of the elderly are a significant reason natural disasters disparately impact the elderly. Their reliance on regular health care, medication, and assistance render the elderly particularly at risk and vulnerable during and after natural disasters. In addition, elderly individuals are more likely to die during natural disasters when access to regular care is cut off.*

*This Note recommends that the Federal Emergency Management Agency ("FEMA") be removed from the Department of Homeland Security ("DHS"), and that FEMA should instead be an independent agency, directly reportable to the President. This separation will unburden the United States' emergency response system from the bureaucratic disorganization of the DHS. This Note also recommends refocusing the United States' emergency response system on state and local governments and ensuring they are more adequately prepared for natural disasters in the future. Both of these changes will allow the United States' emergency response system to better help the elderly population prepare, recover, and evacuate from natural disasters.*

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## I. Introduction

Imagine checking on your grandfather in a nursing home days before a hurricane makes landfall.<sup>1</sup> The nursing home informs you that everything will be fine and there is no need to evacuate your loved one.<sup>2</sup> Your grandfather is unable to speak due to health issues, but you trust that the five-star nursing home will properly care for him throughout the deadly storm.<sup>3</sup> You survive the devastating storm only to learn that your grandfather passed away because of stifling heat after the hurricane knocked out the power to the nursing home facility.<sup>4</sup> Not only has this storm taken your grandfather's life, but it has turned the nursing home into a death trap for seven other elderly residents.<sup>5</sup>

This story is not uncommon; it repeats itself over and over again as natural disasters continue to disproportionately impact the elderly population in the United States.<sup>6</sup> Although preparation for natural disasters—like the hurricanes and wildfires that ravaged the United States in 2017—was prioritized by federal, state, local, and private entities, these efforts often disregard the special needs of vulnerable populations like the elderly.<sup>7</sup> This disproportionate impact on the elderly, both before and after disasters strike, is not a new dilemma. This disparity has been an ongoing issue for some time: “[i]n Louisiana during Hurricane Katrina, roughly 71 percent of the victims were older than 60 and

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1. Rafael Olmeda et al., *Hollywood nursing home with no power becomes death trap for 8 patients*, SUN SENTINEL (Sept. 14, 2017, 12:05 PM), <http://www.sun-sentinel.com/news/hollywood-nursing-home-hurricane-deaths/fl-sb-hurricane-irma-broward-wednesday-20170913-story.html> [hereinafter Olmeda et al.].

2. *See id.*

3. *See id.*

4. *See id.*

5. *See* Glenn Garvin, *From care center to purgatory to 'hellhole': How 11 frail elders died after Irma*, MIAMI HERALD (Sept. 26, 2017, 11:43 AM), <http://www.miamiherald.com/news/weather/hurricane/article174826711.html>; *see also* Olmeda et al., *supra* note 1.

6. *See* William F. Benson, *CDC's Disaster Planning Goal: Protect Vulnerable Older Adults*, CTR. FOR DISEASE CONTROL AND PREVENTION, [https://www.cdc.gov/aging/pdf/disaster\\_planning\\_goal.pdf](https://www.cdc.gov/aging/pdf/disaster_planning_goal.pdf) (last visited Feb. 18, 2019) [hereinafter Benson]; *see also* Ehren B. Ngo, *When Disasters and Age Collide: Reviewing Vulnerability of the Elderly*, 2 NAT. HAZARDS REV. 80, 80 (2001) (noting that the elderly population represents a group with disproportionate vulnerability to both immediate and future effects of disasters) [hereinafter Ngo].

7. Sharona Hoffman, *Preparing for Disaster: Protecting the Most Vulnerable in Emergencies*, 42 U.C. DAVIS L. REV. 1491, 1493 (2009) (noting that the Centers for Disease Control and Prevention and state public health departments have taken some initiative in adapting training and educational programs) [hereinafter Hoffman].

47 percent were over the age of 75.”<sup>8</sup> Surprisingly, “people aged 60 and older compromised 15 percent of the population [in New Orleans] prior to Hurricane Katrina. However, more than 70 percent of those who died as a result of the hurricane were elderly.”<sup>9</sup>

This failure to adequately prepare and assist the elderly in recovering from natural disasters will only become more important as both the elderly population increases and natural disasters become more prevalent.<sup>10</sup> The United States is currently experiencing considerable growth in its elderly population.<sup>11</sup> By 2050, the population aged sixty-five or older will be almost double the size from 2012, as Baby Boomers began turning sixty-five in 2011.<sup>12</sup> This increase will further frustrate the elderly’s already limited ability to adapt, plan, respond, and recover from natural disasters.<sup>13</sup>

The United States should address the seriousness of this issue instead of relying on current misconceptions: “[t]he federal government’s attempt to provide special assistance to the elderly perhaps gives the public the impression someone else takes care of them. While many scholars concede current federal legislation fails to protect enough elderly residents, it often takes a natural disaster to wake the rest of the nation up.”<sup>14</sup> The natural disasters in 2017 provided a necessary wake-up call. Whether it was Hurricane Harvey, Irma, Maria, or the wildfires on the West coast,<sup>15</sup> the U.S. is aware of the devastation these natural

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8. Benson, *supra* note 6.

9. *Id.*

10. Gloria M. Gutman & Yongjie Yon, *Elder abuse and neglect in disasters: Types, prevalence and research gaps*, 10 INT’L J. OF DISASTER RISK REDUCTION 38, 39 (2014) (noting that the global annual average number of natural disasters has increased) [hereinafter Gutman & Yon]; Ngo, *supra* note 6, at 80.

11. JENNIFER M. ORTMAN ET AL., UNITED STATES CENSUS BUREAU, AN AGING NATION: THE OLDER POPULATION IN THE UNITED STATES 1 (2014).

12. *Id.*

13. CTR. FOR DISEASE CONTROL & PREVENTION, U.S. DEP’T OF HEALTH AND HUMAN SERVS., IDENTIFYING VULNERABLE ADULTS AND LEGAL OPTIONS FOR INCREASING THEIR PROTECTION DURING ALL-HAZARDS EMERGENCIES (2012) [hereinafter ALL-HAZARDS] (discussing three limitations regarding the United States’ ability to plan for and protect older adults during emergencies: (1) no specific strategy has been evaluated to identify vulnerable older adults across the country, (2) no consensus exists on the best way to protect older adults, and (3) gaps exist in legal mandates to protect older adults).

14. Ana Petrovic, Note, *The Elderly Facing Gentrification: Neglect, Invisibility, Entrapment, and Loss*, 15 ELDER L.J. 533, 551 (2007) [hereinafter Petrovic].

15. Chris Mooney & Brad Dennis, *Extreme hurricanes and wildfires made 2017 the most costly U.S. disaster year on record*, WASH. POST (Jan. 8, 2018), <https://www.wash->

disasters have caused. With these terrible disasters in mind, the U.S. government cannot continue to overlook the overwhelming and disproportionate impact these disasters have on the elderly population in the United States.

This Note proposes changes that should be made to meet the needs of the elderly in preparing for and recovering from natural disasters. Part II provides background information, including why the elderly population is particularly vulnerable during natural disasters. Part II also introduces applicable federal statutes, federal agencies, a federal response plan, and provides an explanation regarding the federalization of emergency preparedness that occurred over the past decade. Part III discusses and analyzes the shortcomings of these governmental authorities and examines why both agencies and legislation have failed the elderly population in preparing for and recovering from natural disasters. Part IV provides recommendations for adapting existing emergency preparedness strategies to improve assistance for the elderly population during disasters. Part V provides a brief conclusion.

## II. Background

### A. Vulnerabilities

Elderly persons are recognized as a vulnerable or at-risk population.<sup>16</sup> Specifically, elderly individuals “have additional needs before, during, and after an incident in functional areas, including but not limited to: maintaining independence, communication, transportation, supervision, and medical care.”<sup>17</sup> Even healthy elders are at risk for falling below the level necessary for safe, independent, and efficient personal care in a disaster.<sup>18</sup> This subsection examines various aspects that contribute to elders’ increased vulnerability before, during, and after disasters strike.

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ingtonpost.com/news/energy-environment/wp/2018/01/08/hurricanes-wild-fires-made-2017-the-most-costly-u-s-disaster-year-on-record/?utm\_term=.903bd4c21b46.

16. Hoffman, *supra* note 7, at 1498; William Oriol, *Psychosocial Issues for Older Adults in Disasters*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN. 3, <https://store.samhsa.gov/system/files/sma11-disaster-03.pdf> (last visited Feb. 18, 2019) [hereinafter Oriol].

17. Hoffman, *supra* note 7, at 1499.

18. Vukosava Pekovic et al., *Planning for and Responding to Special Needs of Elders in Natural Disasters*, 31 GENERATIONS 37, 37 (2007) [hereinafter Pekovic et al.].

## 1. CHRONIC ILLNESSES AND HEALTH

Elderly individuals who are sixty-five or older have a higher likelihood of suffering from chronic diseases such as: hypertension, heart disease, diabetes, respiratory ailments, and more.<sup>19</sup> Chronic diseases are so prevalent among the elderly that 80% have at least one chronic illness, and many elderly individuals have two or more chronic conditions.<sup>20</sup> Moreover, elders “may also suffer from mobility, cognitive, sensory, social, and economic limitations that can impede their adaptability and ability to function in disasters.”<sup>21</sup> Additionally, during natural disasters and in their aftermath, elders’ health can quickly deteriorate because of poor nutrition, extreme temperatures, exposure to infection, interruptions in medical treatment, and emotional distress.<sup>22</sup>

## 2. SENSORY AWARENESS

In general, with elderly individuals “[t]he senses of vision, hearing, smell, taste, and touch diminish with age, and loss can be intensified by chronic disease.”<sup>23</sup> Moreover, critical senses diminish during natural disasters, and specifically “[p]oor night and peripheral vision can cause difficulties for the elderly in unfamiliar environments or during a rapid evacuation.”<sup>24</sup> Hearing problems may also cause issues in avoiding hazards during a disaster, and create difficulty in noticing or understanding emergency instructions.<sup>25</sup> Additionally, sensory awareness concerns continue even after a disaster has ended because “the older populations’ reduced senses of smell and taste may make them more likely to eat spoiled food, a potentially significant risk when electrical power is unavailable for extended periods of time.”<sup>26</sup>

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19. Hoffman, *supra* note 7, at 1501.

20. Benson, *supra* note 6, at 2 (listing chronic conditions, such as heart disease, cancer, diabetes, or stroke); *see also* Hoffman, *supra* note 7.

21. Hoffman, *supra* note 7.

22. Benson, *supra* note 6, at 2 (“Following Hurricane Katrina, more than 200,000 people with chronic medical conditions, who were displaced by the storm or isolated by flooding, had no access to their usual medications and usual source of care.”); Hoffman, *supra* note 7.

23. Lauren S. Fernandez et al., *Frail Elderly as Disaster Victims: Emergency Management Strategies*, 17 PREHOSPITAL & DISASTER MED. 67, 69 (2002) [hereinafter Fernandez et al.].

24. *Id.*

25. *Id.*

26. *Id.*

### 3. MOBILITY

Elders have a more difficult time evacuating after a disaster due to both physical and cognitive impairments, as well as their lack of general mobility in comparison to younger, more able bodied evacuees.<sup>27</sup> Vulnerable populations, like the elderly, are less likely to evacuate prior to a disaster due to a multitude of reasons: lack of access to transportation, health conditions, financial difficulties, or misperception about their level of risk.<sup>28</sup> This concern, regarding evacuation, is common to all elders, and especially frail elders.<sup>29</sup> Further, many elders residing in institutions, like nursing homes, are too frail to be evacuated before a disaster strikes.<sup>30</sup> Indeed, many elderly people who would like to evacuate find it impossible to do so because of the considerable amount of medical equipment and supplies required to maintain their health.<sup>31</sup>

### 4. MORTALITY

Elders' mortality rates during natural disasters are much higher than the general population's.<sup>32</sup> Data from Hurricane Katrina revealed that the greatest proportion of deaths were among the elderly population, which is consistent with findings from other natural disasters around the world.<sup>33</sup> Many individuals associate the higher rates of mortality during disasters with the uncontrollable variable of old age, however studies show that the high mortality rates are due to general signs of neglect.<sup>34</sup> Following natural disasters, chronic illness worsens due to lack of food and water, extreme heat or cold, stress, exposure to infection, lack of access to medication, technologies and more.<sup>35</sup> Thus, if the causes behind increased elderly mortality continue to be ignored, the

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27. BAYLOR COLL. OF MED. & AM. MED. ASS'N, RECOMMENDATIONS FOR BEST PRACTICES IN THE MANAGEMENT OF ELDERLY DISASTER VICTIMS 4 (2006) [hereinafter BAYLOR].

28. *Id.*

29. Pekovic et al., *supra* note 18, at 38.

30. Benson, *supra* note 6, at 6.

31. Ashley Williams, *Why evacuating is a bigger hurdle for the poor, elderly and disabled ahead of major disasters*, ACCUWEATHER (Sept. 2, 2017), <https://www.accuweather.com/en/weather-news/why-evacuating-is-a-bigger-hurdle-for-the-poor-elderly-and-disabled-ahead-of-major-disaster/70002624>.

32. Pekovic et al., *supra* note 18, at 38.

33. See Gutman & Yon, *supra* note 10, at 39.

34. Petrovic, *supra* note 14, at 552.

35. *Id.*

elderly will remain susceptible during and in the aftermath of disasters.<sup>36</sup>

#### 5. GENERAL HEALTH EFFECTS

Elderly individuals are susceptible to worsening medical conditions during natural disasters.<sup>37</sup> The Centers for Disease Control and Prevention determined after Hurricane Charley in 2004 that one-third of households, where one or more elderly individuals resided, reported worsened medical conditions of at least one member of the household because of the hurricane.<sup>38</sup> Further, 28% of households reported that at least one elderly individual was prevented from receiving routine or expected care for their pre-existing conditions.<sup>39</sup> For many elders, independent living would not be possible without help from the friends, family, and in-home services that provide food, home-based health care, and help with numerous activities of daily living.<sup>40</sup> Natural disasters can cause major disruptions in these necessary services and consequently, any interruption of these services can lead to disastrous health effects on elders who rely on such services for their survival.<sup>41</sup>

#### 6. EFFECTS ON MENTAL HEALTH

Natural disasters have serious mental health effects on people of all ages, because such an event can easily cause feelings of fear and vulnerability.<sup>42</sup> These mental health effects are especially significant for the elderly who may already feel powerless due to changes in health, mobility, and sensory awareness.<sup>43</sup> Even when elderly individuals are successfully evacuated, the evacuation process takes a toll on their mental health.<sup>44</sup> When elders are abruptly moved from one location to another, they often feel disoriented and confused, which leads to an inability to adapt to their surroundings.<sup>45</sup>

Psychological recovery by individuals affected by natural disasters is often dependent on the availability of resources and the ability

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36. Benson, *supra* note 6, at 2.

37. See Pekovic et al., *supra* note 18.

38. *Id.* at 38.

39. *Id.*

40. ALL-HAZARDS, *supra* note 13.

41. Benson, *supra* note 6, at 4.

42. Pekovic et al., *supra* note 18, at 39.

43. *Id.*

44. See *id.*

45. *Id.*

to process and understand their experience.<sup>46</sup> Many elders have difficulty articulating their needs and understanding problems that arise during traumatic events.<sup>47</sup> Further, 17% of persons over the age of sixty-five have dementia, which can lead to symptoms ranging from memory loss and confusion to complete loss of orientation.<sup>48</sup> Confused elders may wander, struggle with impulse control, or resist medical assistance; all of which may impair or prevent their ability to adequately respond to natural disasters.<sup>49</sup>

## 7. ISOLATION

Isolation following a natural disaster disproportionately affects the elderly and increases the likelihood of adverse impacts on this already vulnerable population.<sup>50</sup> Due to various reasons, “[i]solated elders are often left to care for themselves in the turmoil that occurs in the early stages following catastrophes.”<sup>51</sup> Both before and after a disaster strikes, there are limited readily available resources, and typically the elderly population is less physically able to compete for necessary resources as compared to younger disaster victims.<sup>52</sup> Due to elders’ general lack of access to transportation, particularly after a disaster, they often cannot travel or reach areas where resources may be readily available.<sup>53</sup> Moreover, if elders are fortunate and mobile enough to make it to where resources are being disbursed, many elderly individuals are unable to stand for hours in line to receive the necessary aid.<sup>54</sup> For instance, “[t]he widely broadcast images of older people outside the New Orleans Superdome . . . wading through waist-deep water following Hurricane Katrina . . . gave a shocking realism to these challenges [caused by isolation].”<sup>55</sup>

46. Ngo, *supra* note 6, at 83.

47. See Pekovic et al., *supra* note 18.

48. BAYLOR, *supra* note 27, at 4.

49. *Id.*

50. Pekovic et al., *supra* note 18, at 39.

51. *Id.*

52. *Id.*

53. *Id.*; see also Wei Qiao Qiu et al., *Physical and Mental Health of the Homebound Elderly: An Overlooked Population*, 58 J. AM. GERIATRIC SOC’Y 2423, 2423 (2010) (noting that there are more than 38.9 million people over the age of sixty-five in the United States and up to 3.6 million of them are considered homebound).

54. Pekovic et al., *supra* note 18, at 39.

55. See Danika Fears, *Aid Sent to Puerto Rico Not Reaching Desperate Residents*, N.Y. POST (Sept. 28, 2017, 9:40 PM), <http://nypost.com/2017/09/28/aid-sent-to-puerto-rico-not-reaching-desperate-residents/>; see also Pekovic et al., *supra* note 18, at 39.



#### 8. RELUCTANCE TO SEEK HELP

It is common for elderly individuals to avoid assistance from others, and “[t]he tendency of many older persons to regard acceptance of help as a defeat or a step toward total dependency is one of the most frequently observed reactions noted in studies . . . on disaster response.”<sup>56</sup> Elders are reluctant to use public resources for a multitude of reasons: they dislike a welfare stereotype, they are slower to report their losses, and some are worried that contact with the government may place them at risk for involuntary placement in nursing homes.<sup>57</sup> Moreover, the complex requirements associated with obtaining monetary relief cause confusion, anger, and frustration to the point where elders reject any assistance.<sup>58</sup> Ultimately, this unwillingness to accept assistance is bolstered by unfamiliarity with government services, especially to those elders who are eligible.<sup>59</sup>

#### 9. TOTAL VULNERABILITIES

As discussed above, disaster victims depend on a variety of factors in order to properly prepare for, respond to, and recover from natural disasters.<sup>60</sup> These factors significantly contribute to the vulnerabilities of the elderly before, during, and after natural disasters. One factor particular to the elderly population is that “[v]ictims who are housebound, socially isolated, or who have impaired mobility may be compromised in their ability to respond to and recover from disasters.”<sup>61</sup> Moreover, individuals who rely on regular medication, medical treatments, in-home care, and the provision of care and food from service or volunteer agencies are at an increased risk.<sup>62</sup> The correlation between advancing age and the likelihood of having special needs increases the vulnerabilities of the elderly population during disasters.<sup>63</sup> Ultimately, if the vulnerabilities of the elderly population are not incorporated into emergency planning, the critical needs of senior citizens will continue to be unmet.<sup>64</sup>

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56. Oriol, *supra* note 16, at 30.

57. Pekovic et al., *supra* note 18, at 39.

58. Oriol, *supra* note 16, at 31.

59. *Id.* at 26.

60. Fernandez et al., *supra* note 23, at 67.

61. *Id.*

62. *Id.*

63. *Id.* at 68.

64. *Id.*

## B. Federal Authority in Responding to Disasters

This section introduces key federal authority that pertains to disaster preparedness and relief. The authorities below, while not exhaustive, include some of the most crucial statutes, plans, and agencies within the area of emergency management and relief. This section also introduces the federalization of emergency management, which contributed in part to the dilemma the United States currently finds itself in.

### 1. ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT

The principle statute for directing and implementing the federal response to disasters is the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“the Act”).<sup>65</sup> The Act “was passed as a means of coordinating the federal government’s disaster response and provides a mechanism through which federal aid can flow to a particular state.”<sup>66</sup> Essentially, the Act gives money to the states, which then distribute funds as the states deem necessary.<sup>67</sup> For authorization of the Act, a presidential declaration of an “emergency” or “natural disaster” is required.<sup>68</sup>

Under the Act, an “emergency” is defined as follows:

[A]ny occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement the State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.<sup>69</sup>

Under the Act, a “major disaster” is defined as follows:

[A]ny natural catastrophe . . . or, regardless of cause, any fire, flood, or explosion in any part of the United States, which in the determination of the President causes damage of sufficient severity and

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65. Gregory J. Lake, *Federal and State Disaster Response – An Introduction*, 41 *COLO. LAW.* 95, 95 (2012) [hereinafter Lake]; see also Susan L. Cutter & Melanie Gall, *Hurricane Katrina: A Failure of Planning or a Planned Failure?*, U. OF S.C. (Mar. 2006), [citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.565.3352&rep=rep1&type=pdf](http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.565.3352&rep=rep1&type=pdf) (“The Stafford Act established the administration of federal disaster relief to local and state governments, in particular the procedure for a presidential disaster declaration, and assigned the responsibility of mitigation implementation to FEMA.”).

66. *Id.*

67. Deborah F. Buckman, Annotation, *Construction and Application of Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)*, 42 *U.S.C.A.* §§ 5121 *et seq.*, 14 *A.L.R. Fed.* 2d 173 (2006) [hereinafter Buckman].

68. Lake, *supra* note 65.

69. *Id.*

magnitude to warrant major disaster assistance under this Act to supplement the efforts available of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering thereby.<sup>70</sup>

Typically, the governor of the state where disaster strikes requests the President to declare an emergency or major disaster.<sup>71</sup> The President, if the disaster is serious enough, has the ability to make the declaration without any such request.<sup>72</sup> Any governor's request for assistance must follow a determination that the disaster is of such severity and magnitude that an effective response is beyond the capabilities of the state and that federal assistance is necessary.<sup>73</sup> Once the President issues an emergency or major disaster declaration, federal agencies are authorized to provide disaster aid.<sup>74</sup>

## 2. NATIONAL RESPONSE PLAN

Under the authority of the Act and the National Response Plan ("NRP"), FEMA provides disaster assistance to individuals and communities affected by natural disasters.<sup>75</sup> The Department of Homeland Security is responsible for creating and updating the NRP as it sees fit.<sup>76</sup> Specifically, "[t]he NRP . . . provides the coordinating structure and mechanisms for national-level policy and operational direction for Federal support to State, local, and tribal incident managers, Federal-to-Federal support and for exercising direct Federal authorities and responsibilities as appropriate under federal law."<sup>77</sup> The NRP emphasizes local response, proactive federal response to catastrophic events, and coordination of a multiagency structure.<sup>78</sup> The NRP attempts to accomplish these goals by focusing on four categories of emergency management: prevention, preparedness, response, and recovery.<sup>79</sup> Ideally, the

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70. *Id.*

71. *Id.*

72. *Id.*

73. Buckman, *supra* note 67, at 173.

74. Lake, *supra* note 65, at 95.

75. DEP'T OF HOMELAND SECURITY, OIG-06-32, A PERFORMANCE REVIEW OF FEMA'S DISASTER MANAGEMENT ACTIVITIES IN RESPONSE TO HURRICANE KATRINA (2006).

76. See DEP'T OF HOMELAND SECURITY, NATIONAL RESPONSE PLAN, [https://www.dhs.gov/xlibrary/assets/NRP\\_Brochure.pdf](https://www.dhs.gov/xlibrary/assets/NRP_Brochure.pdf) (last visited Feb. 18, 2019).

77. *Id.*

78. *Id.*

79. *Id.* ("Preparedness is a continuous process involving efforts to identify threats, determine vulnerabilities, and identify required resources." Response: "[t]he NRP provides the policies and processes for coordinating Federal support ac-

National Response Framework procedures ensure a scaled response, delivery of necessary resources, and coordination appropriate for a specific instance.<sup>80</sup>

### 3. DEPARTMENT OF HOMELAND SECURITY AND FEMA

The U.S. Department of Homeland Security (“DHS”) is a federal agency designed to protect the United States against threats.<sup>81</sup> DHS’s crucial mission is “to secure the nation from the many threats we face.”<sup>82</sup> In accomplishing this mission, DHS’s duties include aviation and border control, immigration enforcement, emergency response to natural and manmade disasters, cyber security, and more.<sup>83</sup> While DHS’s duties are wide-ranging, it has one simple goal: keeping America safe.<sup>84</sup>

FEMA is within the DHS, administers the Act, and is the primary coordinating agency of disaster relief.<sup>85</sup> Created in 1979, “President Carter restructured the major bureaucracy involved in providing disaster response, by consolidat[ing] approximately 30 disaster-related agencies and programs into the Federal Emergency Management Agency.”<sup>86</sup> FEMA is directed by DHS to “coordinate all disaster relief assistance (including voluntary assistance) provided by federal agencies private organizations, and State and local governments.”<sup>87</sup>

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tivities that address the short-term, direct effects of an incident.” Recovery: “[r]ecoverry involves actions needed to help individuals and communities return to normal, when feasible. Recovery actions include the development, coordination, and execution of service and site-restoration plans and the reconstitution of government operations and services through individual, private sector, nongovernmental, and public assistance programs.”)

80. DEP’T OF HOMELAND SECURITY, NATIONAL RESPONSE FRAMEWORK (2016), [https://www.fema.gov/media-library-data/20130726-1914-25045-8516/final\\_national\\_response\\_framework\\_20130501.pdf](https://www.fema.gov/media-library-data/20130726-1914-25045-8516/final_national_response_framework_20130501.pdf).

81. Margaret Rouse, *U.S. Department of Homeland Security (DHS)*, TECHTARGET, <http://searchcompliance.techtarget.com/definition/US-Department-of-Homeland-Security-DHS> (last visited Feb. 18, 2019).

82. *About DHS*, U.S. DEP’T OF HOMELAND SECURITY, <https://www.dhs.gov/about-dhs> (last updated Sept. 27, 2017) (“With honor and integrity, we will safeguard the American people, our homeland, and our values.”).

83. *Id.*

84. *Id.*

85. Lake, *supra* note 65, at 95.

86. Buckman, *supra* note 67, at 8.

87. 44 C.F.R. § 206.3 (2018) (stating FEMA’s mandate is to “provid[e] Federal assistance programs for public and private losses and needs sustained in disasters; encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and local gov-

FEMA's inherent mission is to support U.S. citizens and first responders to ensure that there is a collaborative effort to build, sustain and improve the country's ability to prepare for and respond to all hazards.<sup>88</sup> Generally, FEMA provides aid through emergency assistance, temporary housing assistance, and monetary support in the form of grants that are allocated to local governments.<sup>89</sup>

#### 4. FEDERALIZATION OF EMERGENCY MANAGEMENT

The United States' emergency management drastically changed after the terrorist attacks of September 11, 2001.<sup>90</sup> After the attacks, policy makers felt it was essential to address "the putative need to create what became the Department of Homeland Security . . . [and the] . . . 'need' for the Federal Emergency Management Agency (FEMA) to be a part of that agency."<sup>91</sup> This federal intervention of emergency management has been strongly criticized as the root of the current problems in American disaster relief.<sup>92</sup> One major criticism of this merger is its structure because "FEMA . . . [was] badly damaged by the . . . failure to understand the field of emergency management and the reality of federal intervention in a system that generally works from the bottom-up, with help, when needed, from the federal government."<sup>93</sup>

Instead of applying a bottom-up approach, the U.S. government applied a top-down approach after September 11th.<sup>94</sup> In a top-down system, "decisions are made in Washington D.C., and subordinates' compliance is expected and is gained through either coercion (the threat of taking money away) or inducements (the possibility of gaining resources, even if those resources are not quite what the community

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ernments; achieving greater coordination and responsiveness of disaster preparedness and relief programs; encouraging individuals, States, and local governments to obtain insurance coverage and thereby reduce their dependence on governmental assistance; and encouraging hazard mitigation measures."); Buckman, *supra* note 67 (citing 42 U.S.C.A. § 5192(a)(2)).

88. *FEMA's Mission Statement*, U.S. DEPARTMENT OF HOMELAND SECURITY, <http://www.fema.gov/media-library/assets/videos/80684> (last updated May 10, 2017).

89. Buckman, *supra* note 67; see also Lake, *supra* note 65.

90. See Thomas A. Birkland, *Disasters, Catastrophes, and Policy Failure in the Homeland Security Era*, 26 REV. POL'Y RES. 423, 424 (2009) [hereinafter Birkland].

91. *Id.*

92. See *id.*

93. *Id.* at 424.

94. *Id.* at 428.

needs).<sup>95</sup> In other words, the federal government began to assert more influence over local disaster preparedness and response.<sup>96</sup>

The September 11th attacks provided a reason for this level of federal government intervention and the attacks gave policy makers an opportunity to achieve their own policy and political goals.<sup>97</sup> Mass casualty attacks and disasters generate domestic political pressure to respond, and September 11th gave rise to an assumption that local and regional responses to disasters required increased federal (i.e., top-down) policy intervention.<sup>98</sup> In contrast to this assumption, “there was little about the September 11 attacks that suggested major problems with emergency management in the United States that would require, *inter alia*, the inclusion of FEMA into the DHS.”<sup>99</sup> Considering the scale and surprise of September 11th, the response by state and local officials was well organized and effective.<sup>100</sup>

Not only did September 11th generate a greater focus on the federal government’s involvement in disaster response and relief, the attacks also shifted the focus of response measures to terrorist attacks instead of natural disasters and their mitigation.<sup>101</sup> After September 11th, “focus on response was accompanied . . . by a decrease in attention to natural hazards in general, and to all hazard mitigation specifically.”<sup>102</sup> Although it is equally important to improve the United States’ response to any kind of disaster, the government disregarded other significant aspects of emergency management.<sup>103</sup>

In the aftermath of September 11th, it was evident that “th[e] emphasis on ‘response’ following September 11[th] was not balanced by increasing attention to mitigation.”<sup>104</sup> Mitigation, in the context of natural disasters, encompasses efforts like building codes and land use planning to limit the extent of damage resulting from a disaster.<sup>105</sup> While mitigation does not eliminate damage, it attenuates the extent of

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95. *Id.*

96. *Id.*

97. *See id.* at 428.

98. *Id.* at 424, 428.

99. *Id.* at 424.

100. *Id.*

101. *See id.* at 427; *see also Restore FEMA to Independent Agency Status Say Emergency Managers*, EMERGENCY MGMT. (Nov. 21, 2008), <http://www.govtech.com/em/disaster/Restore-FEMA-to-Independent.html>.

102. Birkland, *supra* note 90, at 427.

103. *Id.* at 426–27.

104. *Id.*

105. *Id.* at 427.

the damage.<sup>106</sup> Unfortunately, within the DHS “the concept of mitigation has all but disappeared – except, of course, with respect to prevention and deterrence of terrorist attacks.”<sup>107</sup> Terrorism remains a major area of concern, but FEMA’s overall effectiveness began to “decline as attention shifted from natural hazards to terrorism, and from mitigation to response.”<sup>108</sup>

### III. Analysis

FEMA’s failure to provide adequate disaster response, specifically to vulnerable populations like the elderly, has been an ongoing problem that the federal government has failed to properly address.<sup>109</sup> The failures of FEMA, both in preparation and response to natural disasters, were illustrated in the first lawsuit against FEMA arising from Hurricane Katrina in 2005.<sup>110</sup> Thirteen plaintiffs, on their own behalf and on behalf of a class of people similarly situated, alleged that FEMA:

Failed to provide any temporary housing assistance to certain individuals and families, including those with disabilities, who applied for assistance as much as two months [prior to November 10, 2005];  
Failed to provide basic information to disaster victims regarding the scope and conditions of the available temporary housing assistance, including how they [could] continue to receive financial assistance beyond an initial three month period [after Hurricane Katrina struck the Gulf Coast];

Denied temporary housing assistance to individuals who lived at the same address, but in a separate home as another, unrelated, person who also applied for housing assistance; Refused to provide additional temporary housing assistance to families that, because of their size, were entitled to more than the standard amount of housing assistance;

Required disaster victims to apply for Small Business Administration (“SBA”) loans as a condition for obtaining FEMA temporary housing assistance; and

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106. *Id.*

107. *Id.* at 426.

108. *Id.*

109. See John K. Pierre & Gail S. Stephenson, *After Katrina: A Critical Look at FEMA’s Failure to Provide Housing for Victims of Natural Disasters*, 68 LA. L. REV. 443, 453–78 (2008) [hereinafter Pierre & Stephenson] (noting that thousands of residents of numerous states ravaged by hurricanes in recent years would answer “no” to the question of whether FEMA has learned anything from past disasters).

110. See *id.*

Imposed retroactively inconsistent rules regarding funds some victims [received before November 10, 2005].<sup>111</sup>

These horrifying claims against FEMA raised by the general public “are even more concerning when considered in the context of vulnerable populations, like the elderly. The more disasters continued to ravage the United States, the more inequalities became apparent: “Hurricanes Katrina and Rita not only exposed major gaps in emergency preparedness planning, but they also highlighted social, physical, and economic inequities among [vulnerable] population groups.”<sup>112</sup> Notably, many vulnerable people (including elders) were either stranded while awaiting evacuation assistance, refused shelter by unprepared organizations (i.e., FEMA), or experienced difficulties in accessing emergency services because of preexisting health conditions or vulnerabilities.<sup>113</sup>

#### A. Failure to Provide Housing and Repairs

Historically, the federal government has failed to provide temporary housing and repairs after natural disasters. The United States Government Accountability Office “concluded in a February 2007 report that FEMA’s “various catastrophic planning efforts prior to the hurricane were incomplete and FEMA was ‘overwhelmed’ and ‘faced several challenges in providing temporary housing’ to storm victims.”<sup>114</sup> Specifically, Hurricanes Katrina and Rita “illustrated the limitations of the nation’s readiness and ability to respond effectively to a catastrophic disaster – that is, a disaster whose effects almost immediately overwhelm the response capacities of affected state and local first responders and require outside action and support from government and other entities.”<sup>115</sup>

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111. *Id.* at 456–57 (citing Complaint—Class Action for Injunctive and Declaratory Relief, *McWaters v. FEMA*, 408 F. Supp. 2d 221 (E.D. La. 2006)).

112. Gilbert A. Nick et al., *Emergency Preparedness for Vulnerable Populations: People with Special Health-Care Needs*, 124 PUB. HEALTH REP. 338, 338 (2009) (discussing how there has been a lack of local investigations to actually determine the needs of these vulnerable populations, which is contributing to the lack of a unified front in tackling these issues).

113. *Id.*

114. Pierre & Stephenson, *supra* note 109, at 446 (quoting U.S. GOV’T ACCOUNTING OFFICE, GAO-07-88, DISASTER ASSISTANCE: BETTER PLANNING NEEDED FOR HOUSING VICTIMS OF CATASTROPHIC DISASTERS (2007)).

115. U.S. GOV’T ACCOUNTABILITY OFF., GAO-07-88, DISASTER ASSISTANCE: BETTER PLANNING NEEDED FOR HOUSING VICTIMS OF CATASTROPHIC DISASTERS



Housing assistance disproportionately affects the elderly.<sup>116</sup> Many elderly individuals lived in mobile homes during Hurricane Katrina, and 97% of mobile homes were completely destroyed.<sup>117</sup> In the aftermath of this destruction, these communities desperately needed “immediate temporary housing and money to repair existing dwellings, until permanent replacement housing [could] be built for residents . . . .”<sup>118</sup> Two months after the destruction of the mobile homes, “FEMA had ‘virtually ignor[ed] the more extensive, long-term needs that [would] require building thousands of units of affordable housing . . . .”<sup>119</sup> The severity of FEMA’s neglect is illustrated by its failure to react appropriately to post-disaster action:

An elderly couple continue[d] to live with light in only half of their home and almost no heat [and] had to place newspaper[s] around the base of their toilet to prevent leakage. The Small Business Administration estimated that it would cost \$17,054 to repair the house, yet the combined IFGP and FEMA grant was only \$1,212.<sup>120</sup>

The devastation caused by Hurricane Katrina illuminates the federal government’s failure in addressing housing concerns because “Hurricane Katrina destroyed an estimated 300,000 homes, displaced 700,000 people, and resulted in the deaths of more than 1,300 individuals.”<sup>121</sup> In fact, the elderly population was hit the hardest, as “[r]oughly 71 percent of the victims were older than 60 and 47 percent were over the age of 75.”<sup>122</sup> In response to these drastic numbers, FEMA purchased over 27,000 travel-trailers, 25,000 mobile homes at a cost of \$850 million, and over 1700 modular homes at a cost of \$52 million.<sup>123</sup> However, prior to these purchases, FEMA had absolutely no plan in place as to how these homes would be used.<sup>124</sup> As a result, many of these homes never reached their intended destination; specifically, “[s]ome

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(2007) (noting one of these most prominent failures was the government’s ability to provide housing for victims of the storm).

116. See Pierre & Stephenson, *supra* note 109, at 473.

117. *Id.*

118. *Id.* at 474.

119. *Id.*

120. *Id.* at 464.

121. FEMA Housing: An Examination of Current Problems and Innovative Solutions: Before Committee on Homeland Security, 111th Cong. 1-2 (2009) [hereinafter *FEMA Housing*].

122. Benson, *supra* note 6, at 1.

123. *FEMA Housing*, *supra* note 121, at 1.

124. *Id.*

of them remain[ed] on lots in Hope, Arkansas; Texarkana, Texas; Purvis, Mississippi; and Baton Rouge, Louisiana.”<sup>125</sup> In addition to FEMA’s failure to plan, the Office of Inspector General’s report stated that, “prior to Hurricane Katrina, FEMA was not fully prepared to provide sheltering or transitional housing to victims of a catastrophic disaster.”<sup>126</sup> Due to FEMA’s failure to plan accordingly for housing, “the [four years following Katrina were] a series of missteps, missed opportunities, and misspent money.”<sup>127</sup>

#### B. Lack of General Access

FEMA was completely unprepared to provide temporary housing or housing repairs to elderly victims because the entire housing application process was flawed.<sup>128</sup> Disaster victims have complained that “FEMA required applicants for temporary housing ‘to apply for SBA loans and be rejected in order to establish eligibility for federal aid despite the applicants’ patently obvious inability to repay such a loan.”<sup>129</sup> Not only was the process illogical, but “elderly and uneducated people were effectively denied assistance” because they could not complete FEMA’s required paperwork.<sup>130</sup>

The stressful and confusing process of applying for FEMA assistance is still an ongoing problem, as evidenced by reports from Puerto Rico after Hurricane Maria ravaged the island in 2017.<sup>131</sup> The conditions post-Maria made it virtually impossible to get assistance, as “[p]ower lines and phone lines [were] down, which ma[de] it nearly impossible for residents to fill out the online form or call the FEMA hotline to ask questions or follow up on the status of their application.”<sup>132</sup> Furthermore, FEMA’s disorganization and treatment of Puerto Ricans after

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125. *Id.*

126. *Id.*

127. *Id.* at 2 (“Housing gives people a sense of security after a disaster. Knowing you have a home is truly the beginning of recovery.”).

128. See, e.g., Pierre & Stephenson, *supra* note 109, at 474–75.

129. *Id.* at 467 (quoting Petition to Admin. & FEMA: FEMA[’s] Bureaucratic Disasters: Unlawfully Mismanaging Disaster Relief from Florida to California to Hawaii (1993)).

130. *Id.* (citing Petition to Admin. & FEMA: FEMA[’s] Bureaucratic Disasters: Unlawfully Mismanaging Disaster Relief from Florida to California to Hawaii (1993)).

131. Malaka Gharib, *Worry And Confusion As Puerto Ricans Scramble To Apply For FEMA Aid*, NPR (Oct. 28, 2017, 5:00 AM), <https://www.npr.org/2017/10/28/560393378/worry-and-confusion-as-puerto-ricans-scramble-to-apply-for-fema-aid>.

132. *Id.*

Hurricane Maria has been so poor that residents are being forced to rely on unorganized and ineffective support.<sup>133</sup>

The recent chaos in Puerto Rico illustrates this lack of organization: “[a] line of about 1,000 people snaked down Highway 901 in the Southeastern municipality of Yabucoa, Puerto Rico. Legions of survivors of Hurricane Maria were waiting for FEMA officials to arrive so they could apply for disaster assistance.”<sup>134</sup> These individuals, many of whom were poor and elderly, had been waiting overnight for the FEMA team to arrive.<sup>135</sup> Food or water was not readily available, there were no easily accessible bathrooms, and it had been raining continuously.<sup>136</sup> These victims were forced to wait in line, while FEMA gave absolutely no indication of when it was supposed to arrive.<sup>137</sup>

When FEMA officials finally arrived, they began calling storm victims’ names one by one and had everyone else line up outside the gates of the site alongside a busy highway.<sup>138</sup> Staffers of U.S. Representative Nydia Velazquez’s office stated “the scene . . . mirrored what they’ve heard from other parts of the island about a confused and haphazard relief effort.”<sup>139</sup> As a result, “[i]t seem[ed] clear the Administration did not have a meaningful plan in place to rapidly deploy federal assets after Maria struck, and we’re still seeing the lingering effects of federal agencies being caught so flatfooted.”<sup>140</sup> This significant disorganization resulted in a focus on sending aid to Puerto Ricans as rapidly as possible, but questions still need to be addressed as to why this response was delayed and ineffective.<sup>141</sup>

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133. See Manny Fernandez, Lizette Alvarez & Ron Nixon, *Still Waiting for FEMA in Texas and Florida After Hurricanes*, N.Y. TIMES (Oct. 22, 2017), <https://www.nytimes.com/2017/10/22/us/fema-texas-florida-delays.html> (providing an additional example of FEMA’s lack of organization and response time: “[n]early two months after Hurricane Harvey made landfall in Texas on Aug. 25, and six weeks after Hurricane Irma hit Florida on Sept. 10, residents are still waiting for FEMA . . . .”); see also Bianca Fortis, *A Messy FEMA Event in Puerto Rico Sparked Confusion and Rage*, VICE (Oct. 20, 2017, 10:45 AM), [https://www.vice.com/en\\_us/article/ne3w3d/a-messy-fema-event-in-puerto-rico-sparked-confusion-and-rage](https://www.vice.com/en_us/article/ne3w3d/a-messy-fema-event-in-puerto-rico-sparked-confusion-and-rage) [hereinafter Fortis].

134. Fortis, *supra* note 133.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.* (“They said it’s for their security . . . [b]ut what about our security? We’re human too. If they were us, they wouldn’t want to be in our position. They treat us like we’re animals or something.”).

139. *Id.*

140. *Id.*

141. Pierre & Stephenson, *supra* note 109, at 444.

It is unacceptable for a federal agency to be so unprepared for a disaster, especially as FEMA has existed since 1979 and has previously provided temporary housing and other supplies to victims of numerous disasters.<sup>142</sup> With this prior approach, “[o]ne might have expected that . . . FEMA would have learned from these experiences and developed expertise at averting housing crises.”<sup>143</sup> FEMA has clearly failed to learn from its mistakes and adapt its preparation in order to adequately provide necessities to those who are in need.<sup>144</sup>

### C. Failure to Provide Adequate Food and Water

Nearly three weeks after Hurricane Maria devastated Puerto Rico, some residents of the island still had not received any food or water from FEMA.<sup>145</sup> In response to criticism and questions regarding this delay, FEMA responded by stating, “it’s not their job to distribute food and water to the hurricane victims.”<sup>146</sup> Instead, FEMA told Mayor Maddow that it was the mayor’s job to distribute the supplies.<sup>147</sup> In response, “Maddow, like the rest of us, questioned how mayors of [small towns in Puerto Rico] are supposed to do that on their own without vehicles or working phones or fuel.”<sup>148</sup>

When disaster strikes, FEMA must be prepared to quickly provide goods and services to help state and local governments respond to disaster; these resources can range from water and meals to tarps and blankets.<sup>149</sup> FEMA’s primary mission is to “reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other manmade disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.”<sup>150</sup> Given FEMA’s mission statement and responsibilities, it

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142. *Id.*

143. *Id.* at 476.

144. See Monique Judge, *FEMA Officials Say It’s Not Their Job to Distribute Food and Water to Hurricane Victims in Puerto Rico: Report*, THE ROOT (Oct. 11, 2017, 9:45 PM), <https://www.theroot.com/fema-says-it-s-not-their-job-to-distribute-food-and-wat-1819382926>.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. DEP’T OF HOMELAND SEC. OFFICE OF INSPECTOR GEN., *FEMA’S SOURCING FOR DISASTER RESPONSE GOODS AND SERVICES 3* (2009) [hereinafter *DISASTER RESPONSE GOODS AND SERVICES*].

150. 6 U.S.C. § 313(b)(1) (2018).

is clear that FEMA failed to abide by these requirements when it did not help, or even attempt to help, distribute food and water to certain areas of Puerto Rico. Although it is tremendously difficult to prepare for such a disaster, FEMA has the ability, responsibility, and should have had the forethought, “[i]n anticipation of a disaster, [to] begin moving disaster commodities from distribution centers to pre-positioning sites [and] . . . by pre-positioning goods . . . FEMA can rapidly move resources into an affected area post-disaster.”<sup>151</sup> With such responsibility and obligation instilled in FEMA, its failure to respond and rise to action left the public wondering: where was this preparation in Puerto Rico after Hurricane Maria?

This lack of planning is not unique to what happened in Puerto Rico, as similar mistakes were made following Hurricane Sandy in 2012.<sup>152</sup> For example, despite FEMA’s “lean forward” strategy of providing supplies before disasters strike, FEMA did not provide bottled water to New York until three days after Hurricane Sandy.<sup>153</sup> The majority of immediate response fell on the local communities.<sup>154</sup> Further, FEMA relied on private companies like Nestle to provide necessary supplies like drinking water.<sup>155</sup>

Reports show that older adults face adverse health risks due to inadequate nutrition in the aftermath of a disaster.<sup>156</sup> This inherent risk of malnutrition for the elderly occurs not only because of the lack of preparedness but also due to the contents of the packages individuals receive after a disaster.<sup>157</sup> The main concern of lack of adequate nutrition provided in these supplied meals is that “[t]he Meals-Ready-to-Eat

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151. DISASTER RESPONSE GOODS AND SERVICES, *supra* note 149, at 5.

152. Ledyard King, *FEMA’s response to Hurricane Maria won’t get initial review under watchdog agency’s new approach*, USA TODAY (Mar. 16, 2018), <https://www.usatoday.com/story/news/politics/2018/03/16/fema-watchdogs-decision-stop-issuing-initial-disaster-reports-means-no-preliminary-measure-repsonse/428976002/>.

153. Michael Byrne, *Sandy Response in New York Shows How FEMA has Changed*, GOVERNMENT TECHNOLOGY: EMERGENCY MANAGEMENT (Mar. 12, 2013), <https://www.govtech.com/em/disaster/Sandy-Response-Shows-How-FEMA-has-Changed.html>.

154. *Id.*

155. *Nestle Waters North America Sending 5.4 Million Bottles of Water for Hurricane Sandy Victims*, PR NEWSWIRE (Nov. 3, 2012), <https://www.prnewswire.com/news-releases/nestle-waters-north-america-sending-54-million-bottles-of-water-for-hurricane-sandy-victims-177100761.html>.

156. Benson, *supra* note 6.

157. *Id.*

packages that are provided following a disaster contain too much sodium, fat, and calories for many older adults . . . .”<sup>158</sup> In providing “Ready-to-Eat” meals, FEMA is also failing to account for the special needs of vulnerable populations such as the elderly.<sup>159</sup>

#### D. FEMA’s Organizational Failures

FEMA’s response to Hurricane Katrina illustrated the severity of FEMA’s organizational failures and how FEMA was unprepared “in terms of staffing, training, planning, exercises, and the remediation of ‘lessons learned’ during previous events.”<sup>160</sup> FEMA’s poor workforce management and constant reorganizations since Katrina have not provided sufficiently trained staff for catastrophic surges or simple day-to-day operations.<sup>161</sup> Moreover, FEMA has struggled to hire and retain qualified staff necessary to provide adequate services.<sup>162</sup> Specifically, in Hurricane Katrina’s aftermath, FEMA has lacked internal organization due to “[f]requent reorganizations, chronic vacancies, the use of temporary staff in permanent positions, and fragmented human resources management [which] limit FEMA’s ability to hire and retain sufficient staff.”<sup>163</sup> After Katrina, FEMA reported that approximately 20% of crucial positions were not filled with permanent full-time employees.<sup>164</sup> That understaffing caused remaining FEMA staff to be overworked, often performing multiple duties, and rarely getting days off.<sup>165</sup> In fact, FEMA’s overall morale was subsequently negatively impacted by its employment trends,<sup>166</sup> as evidenced by reports submitted by the agency’s Office of Personnel Management which indicated that “FEMA has one of the lowest levels [of morale] in the federal government.”<sup>167</sup>

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158. *Id.*

159. *Id.*

160. DEP’T OF HOMELAND SEC. OFFICE OF INSPECTOR GEN., A PERFORMANCE REVIEW OF FEMA’S DISASTER MANAGEMENT ACTIVITIES IN RESPONSE TO HURRICANE KATRINA 109 (2006).

161. *Id.*

162. *See id.* at 118.

163. *Id.*

164. *Id.* at 119.

165. *Id.*

166. *See id.*

167. *Id.*

The alarming employment trends of FEMA have no solution in sight due to the lack of an organized system of employee development.<sup>168</sup> In fact, “FEMA does not have individual development plans, despite attempts to institute such plans in the past . . . [and there are no] standard requirements for pursuing credentials, additional qualifications, or recommended training.”<sup>169</sup> Furthermore, FEMA has no centralized or comprehensive information on employee training, but instead relies on an inefficient system that is susceptible to error due to its inability to adequately monitor employee development.<sup>170</sup> Not only is general employee training lacking, but “[t]here were no FEMA efforts to conduct planning specifically for catastrophic incidents, and little awareness of the need for preparing for them prior to 2001.”<sup>171</sup> After 2001, FEMA staff attempted to improve and develop catastrophe planning, but staff comments and supporting documents point to inadequate funding as the reason why such plans are not completed.<sup>172</sup> This lack of organization within FEMA, and the inability to promote employee development directly resulted in the inadequate disaster relief provided to the elder population in the United States.<sup>173</sup>

## IV. Recommendation

### A. Accountability

FEMA was an independent agency until it was folded into the DHS.<sup>174</sup> When FEMA stood alone, “[it] was a praiseworthy rampart in the face of catastrophe, notably manned by professionals, not political appointees.”<sup>175</sup> Accordingly, these political appointees who are in charge of the organization and execution of disaster relief need to be held accountable for their mistakes.<sup>176</sup> If individuals within the DHS are held accountable for their systematic failure to appropriately respond,

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168. *See id.* at 121.

169. *Id.* at 122.

170. *Id.*

171. *Id.* at 124.

172. *Id.*

173. *See generally id.*

174. ABC NEWS, *FEMA Was Unprepared for Katrina Relief Effort, Insiders Say* (Sept. 8, 2005), <https://abcnews.go.com/wnt/hurricanekatrina/Story?id=1108268&page=2>.

175. Editorial, *Fixing FEMA*, N.Y. TIMES (Nov. 24, 2008), <http://www.ny-times.com/2008/11/24/opinion/24mon3.html>.

176. *See Hoffman, supra* note 7, at 1540.

this onus would “ensure that specific tasks are undertaken to promote the interests of the disadvantaged [i.e., the elderly] during disasters.”<sup>177</sup> Furthermore, if government officials are required by law to “engage in various planning activities [they] are likely to be motivated to achieve preparedness goals because they will be judged based on their performance.”<sup>178</sup>

### **B. Specific Focus on the Elderly Population**

The United States is in dire need of an improved planning guide that addresses disaster readiness for vulnerable populations and provides requirements to inform the work of governmental authorities.<sup>179</sup> To accomplish this remodeled approach, both federal and state officials should begin focusing specifically on vulnerable populations, like the elderly,<sup>180</sup> because “experts have stressed the importance of obtaining input directly from the affected communities.”<sup>181</sup> Specifically, both “[f]ederal and state officials should be statutorily required to consult with representatives of the various vulnerable populations because these individuals may be in the best position to assess and articulate their needs.”<sup>182</sup> After receiving information from these at-risk populations, state and federal legislators should enact statutes that “ensure that modes of communication, educational materials, shelters, transportation, medical supplies, and other resources are accessible to the disabled, elderly . . . and others who are disadvantaged.”<sup>183</sup>

In addition, in order to protect the elderly “and disabled individuals with limited mobility, the statutes should require support for homebound individuals and the provision of home health care services, to the extent possible.”<sup>184</sup> Further, emergency statutes should also introduce the creation of voluntary registries to store information about

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177. *Id.*

178. *Id.*

179. *Id.* at 1541; see also ALL-HAZARDS, *supra* note 13, at 7 (noting overarching considerations that must be accounted for when planning for vulnerable seniors during emergencies, like focusing specifically on the older adult populations issues and needs when developing preparedness plans).

180. See Hoffman, *supra* note 7 (explaining that preparing for disasters is a priority for many federal and state officials but that these efforts often disregard consideration for vulnerable populations, often leading to greater disaster).

181. *Id.* at 1542.

182. *Id.*

183. *Id.* at 1543.

184. *Id.*



those who are most likely to be isolated and lack requisite mobility and communication modes during an emergency.<sup>185</sup> Registries would make it easier for responders to locate elderly individuals for evacuation or delivery of information and supplies.<sup>186</sup> While these registries could not be mandatory, this information could be facilitated by local authorities and advocacy organizations informing elders of the registries and encouraging individuals to provide the necessary information.<sup>187</sup>

### C. More Authority to the States and Local Governments

The federal government should place more emphasis on vulnerable populations to enact productive statutes, and the federal government should return more emergency management power to the States.<sup>188</sup> The response to a natural disaster will never be one of complete hierarchical organization, but current responses are instead resembling a chaotic reaction, where actors improvise and scramble to assist as many people as possible.<sup>189</sup> The chaos the U.S. experienced after September 11th provided the federal government with the “tendency to look at emergency planning . . . as evidence for the need for more centralized planning from the top down, rather than looking at such failures as opportunities to improve coordination and collaboration throughout the network of responsible agencies.”<sup>190</sup> If disaster response shifted to focus on the state and local level instead of federal assistance, our emergency management would be less of a bureaucratic mess.<sup>191</sup> This change would lead to quicker response times and allow

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185. *Id.* at 1544.

186. *Id.*

187. *Id.*

188. *See id.*; *see also* Birkland, *supra* note 90.

189. Birkland, *supra* note 90, at 429.

190. *Id.*; James Carafano & Richard Weitz, *Learning from Disaster: The Role of Federalism and the Importance of Grassroots Response*, THE HERITAGE FOUND. (Mar. 21, 2006), <https://www.heritage.org/homeland-security/report/learning-disaster-the-role-federalism-and-the-importance-grassroots> [hereinafter Carafano & Weitz] (“Homeland security and disaster management are national, not just federal missions. The right response to domestic emergencies requires effective action from state and local governments, private-sector and voluntary associations, and communities and individuals, as well as support from federal officials. The best way to ensure cooperation and to meet shared responsibilities is not to put big government in charge.”).

191. Birkland, *supra* note 90, at 424.

for local officials to adapt and respond to the needs of individuals without concern about cooperating with the hierarchical and bureaucratic disarray that is the DHS.<sup>192</sup>

A basic starting principle is that “people who are closest to the problem are the ones best equipped to find the best solution.”<sup>193</sup> Therefore, the main assumption of disaster response should be that incidents are managed best at the lowest possible geographic, organizational, and jurisdictional levels.<sup>194</sup> This approach is supported by several reasons. First, because each community is unique, “[p]reparedness planning must account for local conditions of culture, geography, language, infrastructure, politics, and numerous other factors.”<sup>195</sup> Second, local communities are in a better position to respond to the needs of community members because local communities have the resources to respond appropriately, as they are responsible for public safety.<sup>196</sup> In addition, the vast majority of emergency responders “including fire, police, emergency services, utility workers, medical personnel, and volunteer groups . . . work either for or with local communities.”<sup>197</sup>

Third, timing is crucial because “the first few hours [of a disaster] are critical, as most life-threatening injuries require immediate attention. Since local responders are already in the jurisdiction, they are likely the only personnel that can reach the disaster scene in time to make a difference.”<sup>198</sup> Fourth, prioritization of resources is imperative because large-scale disaster requires state and federal government “to prioritize the allocation of additional resources to help affected communities throughout a region. The more robust the local response, the more aid can be focused on the areas [and vulnerable populations] most greatly affected by the disaster.”<sup>199</sup> Lastly, this improved approach facilitates preparedness because if local communities are held primarily accountable for disaster response—instead of relying on the federal government to respond—then local communities are likely to invest in “the resources and assets needed to safeguard their citizens.”<sup>200</sup>

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192. *Id.*

193. Carafano & Weitz, *supra* note 190.

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

#### D. FEMA Should be Removed from DHS

The strength of FEMA's ability to organize and quickly respond deteriorated as "attention shifted from natural hazards to terrorism, and from mitigation to response."<sup>201</sup> September 11th compelled this shift in focus to terrorism and away from natural disaster preparedness and response.<sup>202</sup> Unsurprisingly, in the aftermath of September 11th the U.S. concentrated on the importance of responding to terrorist attacks, but the devastation from Hurricane Katrina reestablished the immense necessity of appropriate and prompt government response.<sup>203</sup> The aftermath of Hurricane Katrina led to FEMA's consolidation into the DHS, which caused FEMA to be "buried beneath a massive bureaucracy whose main and seemingly only focus [was] fighting terrorism while an all-hazards mission [was] getting lost in the shuffle."<sup>204</sup> After FEMA was merged into the DHS, "its budget was cut, permanent federal positions were taken away to staff the new agency, and political appointees with no experience were placed in the agency."<sup>205</sup>

FEMA should return to an independent agency because it is not necessary to keep FEMA within the DHS.<sup>206</sup> By removing FEMA from DHS, a new FEMA administrator would directly report to and be supported by the President.<sup>207</sup> This change would allow FEMA and the President to support initiatives that specifically improve community disaster resilience by reducing general vulnerability without working within a massive hierarchical chain.<sup>208</sup> If this removal was accomplished, "FEMA would return to its pre-2001 role as the main federal coordinator of efforts to prepare for, mitigate, respond to, and recover from all manner of disasters, but would seek to work more cooperatively with local and state governments based on their assessment of

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201. Birkland, *supra* note 90, at 426.

202. *Id.* (discussing how the September 11th attacks were a "major focusing event that generated unprecedented interest in terrorism . . .").

203. Elaine C. Kamarck, *Make FEMA Independent Again*, GOVERNING (Mar. 1, 2006), <http://www.governing.com/columns/mgmt-insights/Make-FEMA-Independent-Again.html>.

204. *Id.*

205. Edward McManus, Opinion, *Make FEMA a separate entity again*, WASH. POST, [https://www.washingtonpost.com/opinions/make-fema-a-separate-entity-again/2017/10/15/cfab194e-b024-11e7-9b93-b97043e57a22\\_story.html?utm\\_term=.c5248c045542](https://www.washingtonpost.com/opinions/make-fema-a-separate-entity-again/2017/10/15/cfab194e-b024-11e7-9b93-b97043e57a22_story.html?utm_term=.c5248c045542) (last visited Feb. 18, 2019).

206. Birkland, *supra* note 90, at 431.

207. *Id.* at 432.

208. *Id.*

their needs.”<sup>209</sup> Moreover, incompetent political appointees would be replaced by competent emergency managers, not just at the administrator’s level but throughout the entire agency.<sup>210</sup>

Numerous experts in emergency management and homeland security—including former FEMA Director James Lee Witt—have suggested that now is the time to remove FEMA from the bureaucracy within the DHS.<sup>211</sup> Re-establishing FEMA as an independent agency that reports directly to the President “with a director designated as a member of the President’s Cabinet, would allow federal, state and local government partners to better serve the American public during future disasters.”<sup>212</sup> Ultimately, a strong and independent FEMA with state and local partners would contribute greatly to the safety and resiliency of at-risk elderly individuals and communities before and after natural disasters.<sup>213</sup>

## V. Conclusion

The United States needs to drastically alter its emergency management regarding vulnerable elderly populations. It is clear that before, during, and after natural disasters the elderly have special needs and require particular attention to maintain their health and safety.<sup>214</sup> Despite this obvious need, progress for vulnerable groups remains slow with severe planning and remedy gaps in this post-disaster response.<sup>215</sup> To properly address these needs, the U.S. emergency management system must be completely remodeled.

The best solution is to adapt the current system and initiate focus on the needs of the elderly and other vulnerable populations at a state and local level. Specifically, FEMA must be removed from the DHS and act as an independent agency, because without this change, FEMA will

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209. *Id.*

210. *Id.*

211. *Restore FEMA*, *supra* note 101 (“FEMA can regain its status as one of the most successful and admired federal agencies, as it was early in this decade, but it will take a concerted effort from the new administration, support from Congress, and participation from stakeholders at all levels . . . [t]he first, and probably most important, step is to immediately begin the process of moving FEMA out of the Department of Homeland Security.”).

212. *Id.*

213. *Id.*

214. *See Hoffman*, *supra* note 7, at 1546 (“For these populations, emergency response failures can have catastrophic consequences, including loss of the ability to work or live independently, permanent injury, and death.”).

215. *Id.*

continue to be bureaucratic mess that does not respond effectively to natural disasters.<sup>216</sup> If the current administration does not begin to take a serious look at altering the current formation and practices of emergency response, the United States will continue to witness disproportionate impact of natural disasters on the elderly.<sup>217</sup> Therefore, in terms of preparing and responding to the elderly during natural disasters, the federal government must prioritize restructuring emergency management in accordance with the specific needs of vulnerable populations.<sup>218</sup>

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216. See generally Birkland, *supra* note 90 (discussing FEMA organizational issues implemented by the Bush administration and recommending organizational changes to be taken by the Obama administration).

217. See *id.*

218. See Hoffman, *supra* note 7, at 1547 (“Responsible emergency preparedness and response efforts are critical to preventing disasters from ending or ravaging the lives of society’s disadvantaged members.”).

