



December 11, 2024

VIA U.S. MAIL and DHS OIG Hotline Complaint Form

The Hon. Joseph V. Cuffari  
Office of Inspector General/MAIL STOP 0305  
Attn: Office of Investigations – Hotline  
Department of Homeland Security  
245 Murray Lane SW  
Washington, D.C. 20528

**Investigation Request: Unconstitutional Restrictions on Speech by FEMA**

Dear Inspector General Cuffari:

America First Legal Foundation (“AFL”) is a national, nonprofit legal foundation working to ensure due process and equal protection for all Americans. You are responsible for providing independent oversight of the Department’s programs and operations, including those of its component, the Federal Emergency Management Agency (“FEMA”).<sup>1</sup> Accordingly, we write to request that you investigate FEMA’s reported violations of the First Amendment by discriminating based on political affiliation and withholding of federal disaster aid following recent natural disasters.<sup>2</sup> In particular, we request that you investigate FEMA employees directing personnel to “avoid homes advertising Trump.”<sup>3</sup>

**I. Background**

The evidence is that personnel carrying out Federal major disaster or emergency assistance functions have failed to perform their work in an equitable and impartial manner in the aftermath of Hurricanes Milton and Helene. Specifically, one FEMA supervisor directed FEMA workers visiting homes to discuss disaster aid programs

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<sup>1</sup> 5a U.S.C. § 4(a).

<sup>2</sup> In her appearance before the House Committee on Oversight and Reform, FEMA Administrator Deanne Criswell stated that she too has “asked the Inspector General to do a full review of this incident.” *Hearing on Oversight of the Federal Emergency Management Agency Before the H. Comm. on Oversight and Reform*, 118th Cong. (2024), <https://perma.cc/KCG8-JKMB> [hereinafter Criswell Testimony] (statement of the Hon. Deanne Criswell, Adm’r, Fed. Emergency Mgmt. Agency).

<sup>3</sup> Leif Le Mahieu, *EXCLUSIVE: FEMA Official Ordered Relief Workers to Skip Houses with Trump Signs*, DAILY WIRE (Nov. 8, 2024), <https://perma.cc/9CSF-4TJK>.

to refrain from visiting homes displaying support for the Republican presidential candidate, Donald Trump.<sup>4</sup>

- In the last several months, the southeastern United States was repeatedly battered by hurricanes.<sup>5</sup> In the case of Hurricane Helene, the damage was concentrated in counties that had predominately voted for President Trump in 2020.<sup>6</sup>
- Last month, the Daily Wire published allegations by a whistleblower who claimed that a “FEMA supervisor told workers in a message to ‘avoid homes advertising Trump’ as they canvassed Lake Placid, Florida to identify residents who could qualify for federal aid” in the aftermath of Hurricane Milton.<sup>7</sup> “[A]t least 20 homes with Trump signs or flags ... were skipped from the end of October and into November due to the guidance.”<sup>8</sup>
- FEMA issued an apology and terminated the supervisor who sent the message, Marn’i D. Washington, on November 9, 2024.<sup>9</sup> The Agency has stated that this political discrimination was an “isolated incident.”<sup>10</sup>
- Ms. Washington later stated that she was repeating guidance that she had received from her superiors, so skipping Trump supporter homes was FEMA policy. During an interview with Fox News, Ms. Washington confirmed that these orders came down from above.<sup>11</sup>
- Other FEMA officials have corroborated Ms. Washington’s claims with the New York Post. One FEMA official stated, “the agency’s practice of skipping Trump-supporting houses—or avoiding ‘white or conservative-dominated’

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<sup>4</sup> *Id.*

<sup>5</sup> *Biden-Harris Administration Makes Emergency Federal Assistance Available to Florida, FEMA Urges Gulf Coast Residents and Visitors to Rush to Complete Preparation*, FED. EMERGENCY MGMT. AGENCY (Sept. 25, 2024), <https://perma.cc/DU26-AM93> (Hurricane Helene); *President Joseph R. Biden, Jr. Approves Major Disaster Declaration for Florida*, FED. EMERGENCY MGMT. AGENCY (Oct. 12, 2024), <https://perma.cc/AG6U-ZXGX> (Hurricane Milton).

<sup>6</sup> Domenico Montanaro, *The Swing-State Counties Hit by Hurricane Helene Mostly Voted for Trump in 2020*, NAT’L PUB. RADIO (Oct. 9, 2024), <https://perma.cc/3W3H-5Y4X>.

<sup>7</sup> Le Mahieu, *supra* note 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Statement from FEMA Administrator Deanne Criswell on Employee Misconduct*, FED. EMERGENCY MGMT. AGENCY (Nov. 9, 2024), <https://perma.cc/E2EU-ACN9>.

<sup>10</sup> Criswell Testimony, *supra* note 2.

<sup>11</sup> Gabriel Hays, *FEMA Official Fired for Telling Staff to Avoid Helping Trump Supporters Says Agency Scapegoating Her*, FOX NEWS (Nov. 14, 2024), <https://perma.cc/T6A3-25QE>; *see also* Rep. James Comer (@RepJamesComer), X (Nov. 19, 2024, 5:16 PM), <https://perma.cc/B5JB-7XPH>.

disaster zones altogether—is an open secret at the agency that has been going on for years.”<sup>12</sup>

- The State of Florida has sued the Administrator of FEMA and Ms. Washington over these events, potentially costing the federal taxpayer millions of dollars.<sup>13</sup>
- Chairman Sam Graves of the House Committee on Transportation and Infrastructure and Chairman Scott Perry of the House Subcommittee on Economic Development, Public Buildings and Emergency Management have shared reports from North Carolina containing allegations of “FEMA employees skipping any home that displayed a ‘Make America Great Again,’ ‘Drain the Swamp,’ ‘Don’t Tread on Me,’ or Trump campaign sign.”<sup>14</sup> The Committee also found that “if the FEMA field team encountered three or more of these signs, the field team could abandon the entire neighborhood without notifying hurricane victims of assistance available to them.”
- Chairman Comer has shared that a whistleblower contacted the House Committee on Oversight and Accountability to report allegations that FEMA is engaged in similar discrimination in Georgia.<sup>15</sup> The whistleblower described an interaction in a FEMA contractor visiting a home “recommended that the family remove Trump campaign materials and signs from their house and yard, stating that his FEMA supervisors view Trump supporters as domestic terrorists.”<sup>16</sup>
- Congressional leaders have expressed grave concerns about FEMA’s alleged political discrimination and have promised to conduct oversight investigations in addition to requesting that your office investigate these allegations.<sup>17</sup>

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<sup>12</sup> Jennie Taer et al., *FEMA Worker Accused of Telling Staff to Skip Hurricane-Ravaged Trump Homes Claims It Was Common Practice: ‘This is Not Isolated,’* N.Y. POST (Nov. 12, 2024), <https://perma.cc/F7TH-HU2F>.

<sup>13</sup> *Moody v. Criswell, et al.*, No. 2:24-cv-14365 (S.D. Fla. Nov. 13, 2024); Press Release, the Hon. Ashley Moody, Att’y Gen. of Fla., Attorney General Moody Takes Swift Action Against FEMA Officials to Make Sure All Americans Are Served as Tropical System Looms (Nov. 14, 2024), <https://perma.cc/RL2H-V26E>.

<sup>14</sup> Letter from Rep. Sam Graves, Chairman, H.R. Comm. on Transp. & Infrastructure, to the Hon. Joseph V. Cuffari, Inspector Gen., U.S. Dep’t of Homeland Sec. (Dec. 3, 2024) (available at <https://perma.cc/A9XM-ZH3N>).

<sup>15</sup> Rep. James Comer (@RepJamesComer), X (Nov. 19, 2024, 5:16 PM), <https://perma.cc/B5JB-7XPH>.

<sup>16</sup> *Id.*

<sup>17</sup> Letter from Sen. Thom Tillis, *et al.* to the Hon. Deanne Criswell, Adm’r, Fed. Emergency Mgmt. Agency (Nov. 19, 2024), <https://perma.cc/9LY7-85K6>; *see also* Graves, *supra* note 14.

## II. FEMA's Targeting Political Speech Violates the First Amendment

### A. *The First Amendment protects political speech*

The First Amendment of the United States Constitution establishes Americans' right to freedom of speech. U.S. CONST. amend. I. "Political speech is the primary object of First Amendment protection." *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 410–11 (2000) (Thomas, J., dissenting) (citations omitted). Accordingly, any restriction on political speech "requires the Government to prove that the restriction 'furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (quoting *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 464 (2007)).

Just as the government may not restrict constitutionally protected speech directly, it "may not deny a benefit to a person on a basis that infringes his constitutionally protected . . . freedom of speech' even if he has no entitlement to that benefit." *Bd. of Cnty. Comm'rs, Wabaunsee Cnty., Kan. v. Umbehr*, 518 U.S. 668, 674, (1996) (quoting *Perry v. Sindermann*, 408 U.S. 593, 597 (1972)). This doctrine, known as the "unconstitutional conditions doctrine," further provides that "a person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981).

More recently, the Court clarified this protection by stating "the well-settled doctrine of 'unconstitutional conditions,' the government may not require a person to give up a constitutional right in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit." *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994) (citing *Perry*, 408 U.S. at 593).

### B. *FEMA violated the First Amendment*

The unconstitutional conditions doctrine applies here to FEMA due to the alleged actions of Ms. Washington and other FEMA personnel in Florida, North Carolina, and Georgia.<sup>18</sup> The unconstitutional conditions doctrine governs cases just like these, where government benefits are conditioned on an otherwise unlawful restriction on constitutionally protected activities.

Here, it would be impermissible for FEMA, or any government agency, to restrict or remove the pro-Trump yard signs and other political messages without narrow tailoring to a compelling governmental interest. FEMA's blanket refusal to provide aid to these homes, and even entire neighborhoods, based on the political speech in the yards of some but not all homes is not narrowly tailored to any compelling governmental interest. FEMA Administrator Criswell herself stated in her

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<sup>18</sup> See, e.g., Tillis, *supra* note 17; Graves, *supra* note 14; Taer, *supra* note 12.

congressional testimony that Ms. Washington's actions were "completely unacceptable," prompting Administrator Criswell to terminate Ms. Washington's employment.<sup>19</sup>

Furthermore, under the unconditional conditions doctrine, FEMA may not work around the Constitution by denying discretionary benefits to restrict protected speech. That is *precisely* what Ms. Washinton and others at FEMA allegedly did by denying disaster assistance based on political speech.

### III. FEMA's Alleged Discrimination on the Basis of Political Affiliation or Support Violates 42 U.S.C. § 1985

Attorney General Ashley Moody has sued FEMA on behalf of the State of Florida. The State's lawsuit alleges violations of the "deprivation clause" and the "support or advocacy clause" of 42 U.S.C. § 1985(3). Section 1985(3) governs conspiracies "for the purpose of depriving . . . any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." *See* Complaint at ¶ 30, *Moody*, (No. 2:24-cv-14365) (citing *Dean v. Warren*, 12 F.4th 1248, 1257 (11th Cir. 2021)).

To support a claim under the deprivation clause, a plaintiff must prove: "(1) the existence of a conspiracy, (2) made for the purpose of directly or indirectly depriving a person or class of persons of equal protection of the law or of the equal privileges or immunities of the law, (3) an act in furtherance of the conspiracy, and (4) injury to a person or their property or the deprivation of a right or privilege to a citizen." *See* Complaint at ¶ 31, *Moody*, (No. 2:24-cv-14365) (citing *Griffin v. Breckenridge*, 403 U.S. 88, 102–03 (1971)).

Moody alleges each of these elements is satisfied: (1) reporting by the Daily Wire alleges that agents from different DHS agencies participated in this conspiracy;<sup>20</sup> (2) the Supreme Court, in *United Bhd. of Carpenters & Joiners of Am., Loc. 610, AFL-CIO v. Scott*, 463 U.S. 825, 836 (1983), found that Republicans may be the targets of

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<sup>19</sup> Criswell Testimony, *supra* note 2.

<sup>20</sup> The intracorporate conspiracy doctrine precludes the court from finding conspiracies within a single entity, but it does not apply here for several reasons. The "Eleventh Circuit has recognized that a county and a state agency are not a single corporate entity under the intracorporate conspiracy doctrine." Complaint at ¶ 38, *Moody*, (No. 2:24-cv-14365) (citing *Dickerson v. Alachua Cnty. Comm'n*, 200 F.3d 761, 767 (11th Cir. 2000)). While some cases generally support the notion that employees of the same federal agency are prohibited under the intracorporate conspiracy doctrine, other cases, for example *Smith v. Meese*, 821 F.2d 1484, 1486 (11th Cir. 1987), endorse the position that a § 1985(3) claim could be brought against employees of the same governmental agency. Complaint at ¶ 40, *Moody*, (No. 2:24-cv-14365). Moody also argues that the "intracorporate conspiracy doctrine does not apply when 'agents act outside the scope of their employment.'" *See Dickerson v. Alachua Cnty. Comm'n*, 200 F.3d 761, 770 (11th Cir. 2000). FEMA has conceded that Ms. Washington's constitutes "a clear violation of FEMA's core values and principles." FED. EMERGENCY MGMT. AGENCY, *supra* note 9.

class-based animus and that “§ 1985(3) was enacted during Reconstruction “to protect Republicans [from] the Klan’s conspiratorial activities” *id.* at 835; (3) Ms. Washington messaged the FEMA team in an act to further this alleged conspiracy and those personnel allegedly followed these discriminatory instructions; and (4) these actions limited the rights of Trump supporters and non-Trump-supporting neighbors who were discriminated against and denied the opportunity to apply for federal aid.

The second part of § 1985(3), the “support or advocacy clause,” prohibits conspiracies to “injure any citizen in person or property on account of . . . support or advocacy” for “any lawfully qualified person as an elector for President.” The support or advocacy clause does not have any animus requirement. Complaint at ¶ 54, *Moody*, (No. 2:24-cv-14365) (citing *Andrews v. D’Souza*, 696 F. Supp. 3d 1332, 1346 (N.D. Ga. 2023)).

The “support or advocacy clause” plainly prohibits the alleged discrimination because there was a conspiracy between FEMA personnel who worked to inhibit the speech or advocacy for a Presidential candidate. This injured these hurricane victims by denying them the opportunity to receive federal disaster assistance on account of their political support. The latter violates the First Amendment under the unconstitutional conditions doctrine, and it also appears to violate another clause of § 1985(3) that prohibits conspiracies “to injure any citizen in person or property on account of such support or advocacy” for a “lawfully qualified person as an elector for President or Vice President.”

*A. Ms. Washington and all other agents involved are liable*

Ms. Washington and all other FEMA personnel who engaged in this conspiracy are liable for this alleged discrimination. 42 U.S.C. § 1983 provides that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

In this case, Ms. Washinton and all other co-conspirators were acting under the color of FEMA’s regulations, 44 C.F.R. § 206.1, *et seq.*, which outline the processes for administering federal disaster aid. Accordingly, Ms. Washinton’s statements and the alleged similar actions in Georgia and North Carolina were rooted in the administration of disaster aid, not some unrelated personal violation of law, so § 1983 makes each co-conspirator liable to the injured parties.

#### IV. Requested Action

To ensure that federal disaster relief is being administered fairly in compliance with the law, AFL hereby requests that you exercise your statutory oversight authority and open an investigation to determine whether American citizens faced political discrimination or retaliation by FEMA in areas affected by Hurricanes Milton and Helene and elsewhere. The dangers inherent in the undue politicization of FEMA's disaster relief role should be evident.

Thank you in advance for your attention to this important matter. Please contact AFL at [docket@aflegal.org](mailto:docket@aflegal.org) if you have any questions or if we may be of further assistance.

Sincerely,

*/s/ Will Scolinos*

America First Legal Foundation

Cc: The Honorable Jim Jordan, Chairman, House Committee on the Judiciary  
The Honorable James Comer, Chairman, House Committee on Oversight and Accountability  
The Honorable Sam Graves, Chairman, House Committee on Transportation and Infrastructure  
The Honorable Scott Perry, Chairman, House Subcommittee on Economic Development, Public Buildings and Emergency Management  
The Honorable Josh Hawley, Senator  
The Honorable Ted Budd, Senator  
The Honorable Thom Tillis, Senator  
The Honorable Rick Scott, Senator  
The Honorable Ashley Moody, Attorney General of Florida  
The Honorable Josh Stein, Attorney General of North Carolina  
The Honorable Christopher M. Carr, Attorney General of Georgia