

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

THE STATE OF LOUISIANA, *et al.*,

PLAINTIFFS.

v.

ALEJANDRO MAYORKAS, *et al.*,

DEFENDANTS.

CIVIL ACTION No. _____

Declaration of Conn Hollis Cole

1. My name is Conn Hollis Cole. I am over the age of 18 and am competent to make this declaration. The facts set forth in this declaration are based on my personal knowledge, information available to me as part of my duties, and publicly available information.
2. I currently serve as the National Flood Insurance Program State Coordinator and State Floodplain Manager of the Florida Division of Emergency Management's Office of Floodplain Management and have served in that role since September 2020.
3. Florida is prone to flooding because of its geographical location and characteristics. It has the longest coastline in the contiguous United States, spanning 1,350 miles between the Gulf of Mexico and the Atlantic Ocean. Florida has 4,510 islands with an area of 10 acres or more. This creates a high vulnerability to hurricanes, tropical storms, nor'easters, high tide cycles, and sea level rise. With Florida's rapid coastal development, approximately 76% of the population (15 million residents) live in coastal areas of the state. Florida is also susceptible to riverine flooding, with approximately 25,949 miles of river. Florida is mostly at or near sea level, is the flattest state in the United States, and has the lowest high point of any other state at just 345 feet. Nearly half of Florida properties, 43%, are located in FEMA-designated Special Flood Hazard Areas (SFHA) or flood zones.
4. Florida experiences an average of 53.7 inches of precipitation annually and has averaged 285 flood reports per year for the past 10 years. Additionally, for the past five years, Florida has averaged 154 flood warnings (flash and areal) and 80 river flood warnings per year.

5. In the Southeast United States, Florida stands to lose the most money to flood damage, according to an analysis from First Street Foundation. In addition to having a large population facing water incursions, the state also has a lot of expensive property in the SFHA. Consequently, Floridians can expect to pay \$8 billion annually on remediating flood damage, according to the analysis.
6. Florida’s flood mitigation efforts successfully reduce flooding and damage to structures in flood-prone areas throughout the state. For over forty years, the state has been systematically engaged in the planning, coordinating, and funding of flood mitigation activity throughout Florida. As a result, Florida’s flood mitigation efforts provide millions of dollars in benefits every year realized by Floridians.
7. Flood insurance is another important tool for protecting Florida’s residents and their most important financial assets—their homes, business, and possessions. “Floods can happen anywhere,” and the Federal Emergency Management Agency (FEMA) estimates that “just one inch of floodwater can cause up to \$25,000 in damage.”¹
8. Because most homeowners’ insurance does not cover flood damage, homeowners need a separate flood insurance policy (NFIP or Private) to cover the building, the contents of the building, or both.
9. The National Flood Insurance Program (NFIP) is a program created by Congress in 1968 that is managed by FEMA. The NFIP has two purposes: 1) to share the risk of flood losses through flood insurance and 2) to reduce flood damages by regulating floodplain development. Florida has a network of 27 private insurance companies and the NFIP Direct that can provide NFIP policies to the public.
10. “The NFIP provides flood insurance to property owners, renters, and businesses” alike.² FEMA acknowledges that having flood insurance coverage helps policyholders recover faster when floodwaters recede.³ The NFIP requires homes and businesses in high-risk flood areas with mortgages from government-backed lenders to have flood insurance.
11. NFIP insurance is available to anyone living in one of the 22,625 participating NFIP communities.⁴ “A community is a governmental body with the statutory authority to enact and enforce development regulations.”⁵

¹ <https://www.fema.gov/flood-insurance>.

² <https://www.fema.gov/flood-insurance>.

³ <https://www.fema.gov/flood-insurance>.

⁴ <https://www.fema.gov/flood-insurance>.

⁵ <https://www.fema.gov/flood-insurance>.

12. There are 468 NFIP participating and 10 non-participating communities in Florida. Across the State as a whole, there are 1,391,288 NFIP policies with a total coverage of \$366,678,210,000.
13. The Community Rating System (CRS) is a voluntary incentive program that recognizes and encourages community floodplain management practices that exceed the minimum requirements of the NFIP. Based on the community's CRS class ranking, the incentives are passed on to NFIP policyholders through premium discounts ranging from 5%–45%. There are 1,504 CRS participating communities nationwide, with 243 in Florida, the highest participation of any state in the nation.
14. Participation in the NFIP is voluntary. To join the NFIP, a community must: 1) complete an application, 2) adopt a resolution of intent to participate and cooperate with FEMA, and 3) adopt and submit a floodplain management ordinance that meets or exceeds the minimum standards of the NFIP. The ordinance must also adopt the FIRM for the community.
15. The local governments' floodplain management regulations must satisfy state law, the Florida Building Code, as well as NFIP requirements.
16. As Florida NFIP communities, they have committed: (a) to issue or deny permits to build or develop in the floodplain; (b) to inspect all development to ensure it complies with the local floodplain management regulations and the Florida Building Code; (c) to maintain records of floodplain development in perpetuity; (d) to work with FEMA to prepare and revise floodplain maps; and (e) to help residents obtain information about flood hazards, flood insurance, and proper methods of flood mitigation.
17. One tried-and-true method for reducing flood damage across Florida is elevating homes and businesses, which was a significant consideration when setting NFIP insurance rates before Risk Rating 2.0.
18. Prior to Risk Rating 2.0, FEMA primarily used the 1% Annual Exceedance Probability (AEP) flood as the basis for the National Flood Insurance Program. The 1% AEP flood is a flood that has a 1 in 100 chance of being equaled or exceeded in any given year and an average recurrence interval of 100 years—often referred to as the “100-year flood.”
19. Before Risk Rating 2.0, FEMA used Flood Insurance Rate Maps (FIRMs) to set rates and, in those maps, determined the AEP flood for each SFHA or flood zone—called the Base Flood Elevation (BFE).
20. For each flood zone, FEMA requires buildings (residential and non-residential) to be elevated to or above the BFE for that location. Florida requires elevating buildings a minimum of one foot above the BFE, known as freeboard. Some

communities have higher standards that require higher freeboard. Typically, the higher a structure was elevated above the BFE level, the lower FEMA's risk for having to pay claims and, therefore, the lower the insurance rate.

21. The Florida Building Code has required a minimum elevation of BFE plus 1-foot of freeboard for non-residential buildings since 2010. The 6th Edition of the Florida Building Code (12/31/2017) required residential buildings also to be elevated one foot above BFE.
22. FEMA, the Department of Housing and Urban Development (HUD), and Florida itself offer grants for elevating homes and businesses.
23. Florida administers those grant programs. FDEM administers three FEMA grant programs that can elevate homes, including the Hazard Mitigation Grant Program (HMGP), Building Resilient Infrastructure and Communities (BRIC), and Flood Mitigation Assistance (FMA). Homeowners and businesses are not eligible applicants independently, so they cannot apply directly. Instead, they need to coordinate with either their city, county, or eligible private nonprofit to apply on their behalf. For the HMGP, they will need to contact their Local Mitigation Strategy Working Group (LMSWG) to see if they would be willing to take their project. While the BRIC and FMA programs do not need LMSWG approval to submit, they are still a good source for contacts for a potential eligible applicant to submit on their behalf. Our state HMGP site has a list of these contacts for anyone interested, or they can be provided upon request. Each program is set up as cost-reimbursement with their cost-shares being (federal/non-federal), 75/25 for HMGP, 75/25 for BRIC, and 75/25, 90/10, or 100/0 for FMA depending on if the structure has a history of repetitive loss.
24. The HMGP is a post-disaster grant program, which means it receives funding after a major disaster declaration. In addition to FEMA's regulations for the HMGP, Florida has an added administrative rule in the Florida Administrative Code, FAC 27P-22. This sets up the LMSWG as well as the allocation/application process in Florida. Funding is allocated based on a county's proportion of the amount of federal assistance that comes into the state for the relevant disaster and is reallocated using a three-tiered system. Counties maintain a prioritized project list in their LMS which they use to select projects from when funding becomes available. Neither FEMA nor the state sets priorities for this grant program but rather determines eligibility based on the program guidelines. Applications come to the state during the open application period for review before going to FEMA for final approval. Subapplicants then contract with the state to begin their project.
25. For these federal grant programs, FEMA relies on the State and its local governments to enforce the requirement that subrecipients obtain NFIP flood

insurance policies. FEMA will not consider a project “closed” until the state provides FEMA with proof that every property owner within such a project has obtained the mandatory flood insurance. If any property owner fails to obtain the flood insurance, the State of Florida is required to return funds to FEMA that were reimbursed to the property owner through the eligible subrecipient. Even if a property owner complies with all the other project requirements and otherwise completes the mitigation project, the state is responsible for reimbursing FEMA for the property owner’s failure to obtain insurance. Therefore, it is critical to the state’s interest that grant subrecipients be able to afford flood insurance.

26. For BRIC and FMA, funding is annually appropriated and is nationally competitive, as every state submits applications for the funding. FEMA can set certain priorities to incentivize certain project types. Once FEMA approves the project, the state contracts with them to begin the project.
27. The only state mitigation program offered at FDEM is the Hurricane Loss Mitigation Program (HLMP). It has an annual cycle and can fund many of the same mitigation projects as the FEMA programs; however, there is a monetary cap. To apply, local governments and nonprofit organizations can apply through an RFP process, which is published in the Florida Administrative Register. Unfortunately, homeowners are not eligible to apply.
28. Florida funds approximately \$2,000,000 each year to educate its residents about those grant programs, process grant applications, distribute grant funds, and monitor and enforce grantees’ compliance with the requirements of those programs with an additional expenditure of federal funds of approximately \$18,000,000.
29. Despite the grant programs, and Florida’s success in flood reduction from elevating structures, under Risk Rating 2.0, elevating a structure above the BFE appears to have only a negligible effect on the insurance rate charged for elevated homes and businesses.
30. Although, Risk Rating 2.0 eliminated FEMA’s grandfathering policy. FEMA’s Community Rating System (CRS) policy discounts are still in place for the CRS communities in Florida. However, many residents of Florida will still pay higher rates because, unlike the grandfathering policy, the CRS discounts do not stop the rates themselves from increasing. So even with the CRS discounts, many residents of Florida will pay higher rates under Risk Rating 2.0.
31. Florida’s flood mitigation efforts have successfully reduced the effects and damage due to flooding. Flood mitigation projects can be generally categorized into building modification projects and drainage projects. Building modification projects refer to projects that reduce flood risk by removing or

elevating a structure out of the floodplain. Examples of building modification projects that Florida implements include the elevation of structures above the base flood elevation level, acquisition of properties/structures that experience repetitive loss, mitigation reconstruction (a structure is demolished and an elevated code-compliant structure is built in its place), and other project types. Building modification projects can reduce, protect, and/or prevent a structure from receiving flood-caused damages from several storms throughout the lifetime of the project.

32. Drainage mitigation efforts refer to projects that help reduce the frequency and severity of stormwater flooding, as well as the long-term risk of flooding to the community. Drainage projects are considerably beneficial to a community because project costs are relatively low when considering the number of people and structures that benefit from a single project. Following every declared disaster in the State of Florida, a Loss Avoidance Assessment is conducted to assess the performance of implemented mitigation projects against the disaster. In a 2018 Loss Avoidance Assessment (analyzing the performance of flood mitigation efforts against Hurricane Irma), the analyzed drainage projects offered an average of 208% return on investment from this disaster alone. In other words, on average, these drainage projects offered benefits that amounted to double the original project cost after just one storm. These projects mitigate against many events throughout their project useful life, adding even greater benefits after each storm.
33. Successful flood mitigation projects directly improve Floridian's quality of life by avoiding losses to people, structures, and institutions. Additionally, flood mitigation efforts can spur economic growth and improve overall resiliency.
34. On average, based on information provided by FEMA and the Association of State Floodplain Managers (ASFPM), 19.8% of policies in Florida will decrease, 68.2% of policies will increase by no more than \$120 a year, 7.8% will increase no more than \$240 a year, and 4.2% more than \$240 per year under Risk Rating 2.0.
35. Those rate increases not only affect homeowners but also those who rent properties.
36. These rate increases affect most policy owners. Still, they, could pose a particular hardship to low and moderate-income policy owners and their families, many of whom have lived in these areas for generations.
37. As rates increase, some homeowners, business owners, and renters in Florida could be priced out of areas requiring flood insurance.

38. FEMA's refusal to reveal Risk Rating 2.0's methodology, despite numerous requests, has made it impossible for the Office of Floodplain Management, insurance agents, local floodplain administrators, and local governments to explain the premium rate increases due to Florida NFIP policyholders.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Tallahassee, Florida, this 30th day of May, 2023.

Conn Hollis Cole