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VIA U.S. and Electronic Mail

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Title VI Complaint: The Port Authority of New York & New Jersey

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. We write to you today to request that your respective agencies initiate a review of the Port Authority of New York and New Jersey’s (“Port Authority”) compliance with Title VI of the Civil Rights Act of 1964, as the Port Authority appears to be engaged in overt and systemic violations of civil rights while receiving significant federal funding, primarily from the Department of Transportation (“DOT”) and the Environmental Protection Agency (“EPA”).

I. Background

The Port Authority is a joint venture between the State of New York and the State of New Jersey, which operates some of the world’s busiest ports and terminals; moving more than \$200 billion of containerized goods,¹ and 195 million people each year.² But instead of focusing on safety, efficiency, and improvement, the Port Authority has instead focused on engaging unlawful race discrimination through its extensive implementation of anti-American Diversity, Equity, & Inclusion (“DEI”) programs and “collective commitment to equity at all levels.”³

¹ PORT AUTH. OF N.Y. & N.J., CAPITAL OF COMMERCE, <https://perma.cc/T2PU-UF6G>.

² Press Release, Port Auth. of N.Y. & N.J., Passenger Volumes at Port Authority Airports Take Off with Busiest First Half of Year Ever, Capped by Record-Breaking June (July 26, 2024), <https://perma.cc/CJ6X-4VW7>.

³ *Port Authority’s Chief DEI Officers [sic] Journey from Young Latino Immigrant to Champion for Diversity*, AM. J. OF TRANSP. (Sept. 17, 2024), <https://perma.cc/BJX9-ALYE>.

The Port Authority is a major recipient of federal funding, including more than \$3.6 billion from DOT since 2008,⁴ and a \$451 million grant from the EPA in 2024 as part of the Clean Ports Program.⁵ Your departments have an obligation to enforce Title VI and the authority to investigate allegations of violation of the same.

II. President Trump has directed all federal agencies to eliminate unlawful DEI programs operated by federal assistance recipients

42 U.S.C. § 2000d provides that “No person in the United States shall, on the ground of race, color, or national origin, ... be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁶ “The term ‘program or activity’ ... means all the operations of ... a department, agency, special purpose district, or other instrumentality of a State ... any part of which is extended Federal financial assistance.”⁷

For decades, this provision of federal law was only selectively enforced. However, on January 21, 2025, President Trump ordered “all agencies to enforce our longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities.”⁸

a. DOT regulations authorize the Departmental Office of Civil Rights to investigate Title VI violations.

“The Departmental Office of Civil Rights (DOCR) enforces civil rights laws and regulations” and “is responsible for ensuring that recipients of funds from the Department of Transportation (DOT) conduct their Federal assisted programs and activities in a non-discriminatory manner and in accordance with United States civil rights laws and labor laws.”⁹ “A recipient, ... may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin.”¹⁰

DOCR “will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible

⁴ *Recipient Profile Port Authority of New York & New Jersey* (UEI No. S2TXEU92QGE3), USASPEND.GOV, <https://perma.cc/5JA3-DRX4>.

⁵ *Project Grant (FAIN: No. 96275025)*, USASPEND.GOV, <https://perma.cc/8WE3-JQ3H>.

⁶ 42 U.S.C. § 2000d.

⁷ *Id.* at § 2000d-4a.

⁸ *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, Exec. Order No. 14173 § 2, 90 Fed. Reg. 8633, 8633 (Jan. 31, 2025), <https://perma.cc/E7NQ-TA73>.

⁹ *About DOCR*, U.S. DEPT OF TRANSP., <https://perma.cc/KF7A-RVE5>.

¹⁰ 49 C.F.R. § 21.5(b)(2).

noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.”¹¹

“Compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to: ... A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States.”¹²

b. EPA regulations authorize the Office of External Civil Rights Compliance to investigate Title VI violations.

Similarly, “The EPA Office of Civil Rights (OCR) is responsible for developing and administering EPA’s means of ensuring compliance under [Title VI].”¹³ “A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, [or] national origin.”¹⁴

“The OCR shall promptly investigate all complaints filed under this section.”¹⁵ “If OCR determines that an applicant or recipient is not in compliance with this part, and if compliance cannot be achieved voluntarily, OCR shall make a finding of noncompliance.”¹⁶ “If compliance with this part cannot be assured by informal means, EPA may terminate or refuse to award or to continue assistance. EPA may also use any other means authorized by law to get compliance, including a referral of the matter to the Department of Justice.”¹⁷

III. The Port Authority’s DEI programs facially violate Federal Law

As an interstate compact formed by the states of New York and New Jersey, the Port Authority is self-evidently a covered program under section 2000d. By its own admission, the Port Authority has been operating a DEI program for nearly sixty years. “Since 1968, the Port Authority has been committed to diversity and inclusion in its workforce and has also worked to increase business opportunities for minorities, women, and small business entrepreneurs in the New York/New Jersey region.”¹⁸

¹¹ *Id.* at § 21.11(c).

¹² *Id.* at § 21.13(a); *see also* 42 U.S.C. § 2000d-1 (requiring compliance with 42 U.S.C. § 2000d to receive federal funds).

¹³ 40 C.F.R. § 7.20.

¹⁴ *Id.* at § 7.35(b).

¹⁵ *Id.* at § 7.120.

¹⁶ *Id.* at § 7.130(b)(1).

¹⁷ *Id.* at § 7.130(a); *see also* 42 U.S.C. § 2000d-1. (discussing similar compliance proceedings for 42 U.S.C. § 2000d).

¹⁸ *Diversity & Inclusion*, PORT AUTH. OF N.Y. & N.J., <https://perma.cc/6285-VMHB>.

Statements by Port Authority leadership confirm this. For instance, in an interview earlier this year, the new Aviation Director Sarah McKeon said, “We have programs that are intentionally looking at building our representation across the board.”¹⁹ In a similar vein, Clarelle DeGraffe, who runs the PATH rail system, said in 2023 that she has “identified and promoted talented Black professionals to key positions of leadership.”²⁰ These statements align the Port Authority’s commitment to develop a “comprehensive Diversity Recruitment Strategy” in 2021.²¹

Moreover, the Port Authority has commitments to “equity” throughout its website. “In 2023, the Port Authority announced the establishment of a permanent Workplace Equity Council (“WEC”). This body is dedicated ... [with] an emphasis on considering opportunities and equity for Agency employees throughout their careers.”²² This suggests that the Port Authority’s unlawful racial discrimination is occurring not only at the hiring stage, but also in decisions of promotion and career advancement.

Taken together, these statements are part of a trend that reveals the Port Authority’s fixation on race- and sex- based employment practices—and could even be read as implying the existence of racial hiring quotas—which are independently prohibited by Title VII of the Civil Rights Act of 1964.²³

a. The Port Authority operates a sprawling business supplier DEI program.

In addition to its apparently illegal employment practices, the Port Authority also operates a large-scale supplier DEI program that discriminates against its contractors and vendors on the basis of protected characteristics, including race and color.²⁴ The Port Authority classifies certain contractors as “Minority, Women-owned, Small, and Disadvantaged Business Enterprises.”²⁵

Specifically, the Port Authority boasts that it maintains a “20% participation with certified Minority-owned Business Enterprises (“MBE”)” across all operations.²⁶ In fact, the Port Authority’s website states that it “requires the agency and its

¹⁹ *Port Authority Touts Female Leadership as Trump Blasts DEI*, SUPPLY CHAIN BRAIN (Mar. 18, 2025), <https://perma.cc/HB93-J7UF>; *see also id.* (“all six key departments at the Port Authority of New York and New Jersey will now be headed by women”).

²⁰ Scott Ladd, *Clarelle DeGraffe Charts PATH to Greater Diversity*, PORT AUTH. OF N.Y. & N.J.: NOW ARRIVING (Feb. 15, 2023), <https://perma.cc/Z74S-MAZU>.

²¹ Press Release No. 30-2021, Port Auth. of N.Y. & N.J., Port Authority Releases New 25-Point Plan to Address, Improve Race Dynamics Across the Agency and Raise Standards for Workplace Fairness and Diversity (Apr. 05, 2021), <https://perma.cc/Y9FN-7GN5>; PORT AUTH. OF N.Y. & N.J., TAKING ACTION ON RACE DYNAMICS: THE COMPLETE REPORT FROM THE LEADERSHIP STEERING COMMITTEE (2021), <https://perma.cc/V3WB-QDNP>.

²² PORT AUTH. OF N.Y. & N.J., 2023 ANNUAL REPORT 31 (2024), <https://perma.cc/L3PX-WJWD>.

²³ 42 U.S.C. § 2000e.

²⁴ *Expanding Business Opportunities*, PORT AUTH. OF N.Y. & N.J., <https://perma.cc/LUQ7-9NBL>.

²⁵ *Getting Started*, PORT AUTH. OF N.Y. & N.J., <https://perma.cc/GY6K-UDN8>.

²⁶ *Supplier Diversity: Intro*, PORT AUTH. OF N.Y. & N.J., <https://perma.cc/UW5L-96GW>.

contractors to make a good-faith effort to achieve 20 percent participation” with MBEs. The Port Authority defines MBE as a “business entity which is owned by one or more members of one or more minority groups.”²⁷ And it appears to strictly police this criterion as it further states that otherwise eligible business enterprises can have certification rejected if “family members ... who are not ... minorities play major roles in the operation of the business.”²⁸

In addition to these quotas and set-asides, minority-owned businesses also receive a substantial competitive advantage. Under the Port Authority’s “price preference” policy, minority-owned vendors “may be awarded the purchase order even though their price *exceeds the lowest bid by up to 10 percent*.”²⁹ This means that for every million dollars on a contract bid, the Port Authority will pay up to an extra \$100,000 to engage in race-based discrimination. In addition to being wasteful of taxpayer and ratepayer resources, it is illegal and simply un-American.

Finally, the Port Authority maintains a specific “Diversity Management” portal for MBEs to obtain certification and conduct vendor outreach.³⁰ “Eligible certified businesses can grow with participation in the following:

- A&E Principals Academy
- Construction Mentor-protégé Program
- Informal Purchase Bids
- Janitorial Maintenance SBE (JMSBE)
- Set-aside Program
- Vendor Price Preference Subcontracting Program.”³¹

All of these programs are available, or not available, to businesses based on nothing other than the skin color or sex of the business owner.

b. The Port Authority supplier diversity program violates Title VI

As an entity that receives federal funds, the Port Authority is a covered program under Section 2000d. Consequently, Title VI prohibits it from subjecting any person to discrimination based on race. This prohibition extends to “all of [its] operations.”³² The way in which the Port Authority operates its supplier diversity program facially discriminates against businesses operated by Americans outside of the Port Authority’s preferred racial and ethnic groups.

²⁷ PORT AUTH. OF N.Y. & N.J., GUIDELINES FOR CERTIFICATIONS OF MINORITY BUSINESS ENTERPRISES (MBES) AND WOMEN-OWNED BUSINESS ENTERPRISES 1 (2019), <https://perma.cc/5CNC-BZTC>.

²⁸ *Id.* at 4.

²⁹ *Supplier Diversity: Frequently Asked Questions*, PORT AUTH. OF N.Y. & N.J., <https://perma.cc/UW5L-96GW> (emphasis added).

³⁰ *Diversity Management Program*, PORT AUTH. OF N.Y. & N.J., <https://perma.cc/YD5Q-DREC>.

³¹ *Getting Started*, *supra* note 25.

³² 42 U.S.C. § 2000d-4(a).

The practice of setting aside contracts for qualifying business entities combined with awarding contracts to inflated bid prices results in a substantial competitive advantage for companies owned by individuals with preferred racial and ethnic characteristics. Simply put, race is being used to create an uneven playing field. This type of ethnic favoritism is anti-American and was outlawed by the Civil Rights Act of 1964.

The separation of MBEs from the general body of Port Authority contractors, the operation of specific portal interfaces for MBEs, and the existence of specific programs and outreach only available to qualifying MBEs, constitute illegal segregation under federal law.³³

c. The Port Authority's discriminatory programs are not saved by federal Disadvantaged Business Entity regulations.

While Port Authority tries to couch the discriminatory programs described above as consistent with federal “Disadvantaged Business Enterprise” (“DBE”) regulations, such attempts are flawed and unavailing. First, the Port Authority openly acknowledges that its programs *exceed federal law*. “Our current goals go beyond federal requirements, and we continue to work toward accomplishing these goals with top leadership support.”³⁴

Next, the regulations the Port Authority references are likely unlawful to the extent they allow (or require) racial discrimination. And agencies have a duty to evaluate the legality of its regulations with federal law and Executive Orders. *See* E.O. 14151, “Ending Radical and Wasteful Government DEI Programs and Preferencing” & E.O. 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity.” Finally, to the extent that federal DBE designations are lawful, the Port Authority’s program far exceeds the scope of the federal program allowances.³⁵ The Port Authority cannot cite to federal rules to discharge itself of any liability for its actions that far exceed any reasonable bounds of what federal regulations might permit.

³³ *See* 49 C.F.R. § 21.5(b)(1)(iii) (“A recipient to which this part applies may not directly or through contractual or other arrangements, on the grounds of race, color, or national origin ... Subject a person to segregation or separate treatment in any matter.”).

³⁴ *Expanding Business Opportunities*, *supra* note 24.

³⁵ *See id*; *Compare Supplier Diversity: Apply for Certification*, PORT AUTH. OF N.Y. & N.J., <https://perma.cc/UW5L-96GW> (requiring “management and daily business operations must be controlled by one or more individuals who meet the following ethnic definitions” for DBEs); GUIDELINES FOR CERTIFICATIONS, *supra* note 27, at 2 (requiring “a business entity owned by one or more members of one or more minority groups” for MBEs.), *with* 49 C.F.R. § 26.67(a)(1), 26.67(d) (detailing how DOT allows membership in those racial and ethnic group to create a “presumption” of disadvantaged status, but group membership is *not* a requirement to qualify as a DBE.); *see also* 30 C.F.R. § 33.203(d) (detailing the EPA’s requirements).

Put another way, a disadvantaged white individual's business could theoretically qualify as a DBE with the DOT, but that business would not be able to participate in the Port Authority's program. Recently, the legality of DBE programs, including the one operated by the Department of Transportation, has been called into question by courts up to and including the Supreme Court of the United States, and compliance with them may itself constitute a violation of federal law.³⁶

Therefore, the Port Authority cannot rely on federal regulations to justify its Title VI-violating DEI programs. To the extent the federal designations are even legal, the Port Authority blows the gates off those limits and violates Title VI in the process. Urgent action is needed by DOT and EPA to protect the rights of American citizens and restore true equality across the United States.

IV. Investigation request

Therefore, pursuant to 42 U.S.C. § 2000d, AFL hereby requests that DOT and EPA initiate an investigation into "The Port Authority of New York & New Jersey" (UEI No. S2TXEU92QGE3) to determine if it is in compliance with Title VI, applicable Executive Orders, and other non-discrimination requirements and commitments that entities commit to when receiving federal funding.

V. Conclusion

Please do not hesitate to contact us if we can be of any further assistance. Thank you for your attention to this matter.

Sincerely,

Andrew J. Block
Senior Counsel
America First Legal Foundation

cc: The Hon. Sean Duffy, Secretary of Transportation
The Hon. Lee Zeldin, Administrator of the Environmental Protection Agency
The Hon. Harmeet Dhillon, Office of Civil Rights, Department of Justice

³⁶ *Kousisis v. United States*, 605 U.S. ---, 145 S. Ct. 1382, 1403–04 (2025) (Thomas, J., concurring) (expressing doubt at the legality of DBE programs); *Mid-America Milling Co., LLC v. U.S. Dep't of Transp.*, No. 23-cv-00072, 2024 WL 4267183 (E.D. Ky. Sept. 23, 2024) (enjoining DOT DBE program for violating equal protection laws).