

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

STATE OF WASHINGTON, et al.,

Plaintiff,

v.

FEDERAL EMERGENCY MANAGEMENT  
AGENCY, et al.,

Defendants.

CIVIL ACTION  
NO. 1:25-cv-12006-RGS

**PROPOSED ORDER TO ENFORCE THE COURT'S SUMMARY JUDGMENT ORDER**

For the reasons articulated in Plaintiff States'<sup>1</sup> Motion to Enforce the Court's Summary Judgment Order, and for the reasons set forth in the Court's accompanying memorandum, the Court **GRANTS** Plaintiff States' motion and **ORDERS** the following:

1. Within seven (7) days of this order, Defendants<sup>2</sup> shall:
  - a. Communicate the reversal of the Hamilton Memo and April 4 Press Release<sup>3</sup> to all stakeholders who received the Hamilton Memo, April 4 Press Release, or any

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<sup>1</sup> Plaintiffs are the State of Washington; the Commonwealth of Massachusetts; the State of Arizona; the State of California; the State of Colorado; the State of Connecticut; the State of Delaware; the District of Columbia; the State of Illinois; Office of the Governor, *ex rel.* Andy Beshear, in his official capacity as Governor of the Commonwealth of Kentucky; the State of Maine; the State of Maryland; the State of Michigan; the State of Minnesota; the State of New Jersey; the State of New Mexico; the State of New York; the State of North Carolina; the State of Oregon; Josh Shapiro, in his official capacity as Governor of the Commonwealth of Pennsylvania; the State of Rhode Island; the State of Vermont; and the State of Wisconsin, and their subdivisions and instrumentalities.

<sup>2</sup> "Defendants" are the Federal Emergency Management Agency (FEMA), Karen Evans in her official capacity as acting FEMA Administrator under the title "Senior Official Performing the Duties of the Administrator," the Department of Homeland Security (DHS), Kristi Noem in her official capacity as the Secretary of Homeland Security, and the United States.

<sup>3</sup> The "Hamilton Memo" is the memorandum issued by Cameron Hamilton on April 2, 2025, available at ECF No. 96 at 45-46. The "April 4 Press Release" is the press release issued by FEMA on April 4, 2025, available at ECF No. 96 at 55.

associated advisories or bulletins,<sup>4</sup> and file a status report identifying what communications were made.

- b. File a status report with this Court identifying:
  - i. All Building Resilient Infrastructure and Communities (BRIC) projects that have been awarded by Defendants since the date of this Court's Summary Judgment Order, ECF No. 130 (the Order);
  - ii. All BRIC projects that Defendants have moved from Phase 1 to Phase 2 since the date of the Order;
  - iii. All period of performance extensions for BRIC projects that have been granted by Defendants since the date of the Order;
  - iv. All selected, phased, or otherwise pending BRIC projects for which Defendants have sent requests for information since the date of the Order;
  - v. The current balance of pre-disaster mitigation funds set-aside under 42 U.S.C. § 5133(i) or appropriated directly to or for the purpose of FEMA's pre-disaster mitigation program, and the congressional authorization for those funds;<sup>5</sup>
  - vi. The amount of funds that DHS has requested for apportionment by the Office of Management and Budget (OMB) for federal fiscal years 2025 and 2026 for the Disaster Relief Fund and the BRIC program; the amount of funds OMB has currently apportioned to DHS or FEMA for the

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<sup>4</sup> This shall include all the stakeholders identified in ECF No. 96 at 67-77.

<sup>5</sup> FEMA's pre-disaster mitigation program is the program authorized by 42 U.S.C. § 5133, which has gone by different names over time, including Pre-Disaster Mitigation (PDM) and BRIC.

Disaster Relief Fund and the BRIC program; the date(s) of such apportionment(s); the categories of such apportionments; any footnotes and/or conditions placed by OMB in connection with such apportionment(s); approval information for such apportionment(s); and any spend plan submitted to OMB by DHS or FEMA for the Disaster Relief Fund and the BRIC program; and

- vii. Any other steps taken by Defendants to comply with this Court's Order to reverse the termination of the BRIC program.

2. Within fourteen (14) days of this order, Defendants shall:
  - a. Communicate to each Plaintiff State's emergency management agency the status of all BRIC projects within that state that were impacted by the BRIC termination, including a description of each remaining stage of review and approval, the timeline for these stages, and any steps the state or its subgrantees must take in order to move the project to the next stage, and file a status report identifying what communications were made; and
  - b. File a status report with this Court that sets forth any remaining steps to reverse the termination of the BRIC program and Defendants' expected timeline, including identifying when Defendants will:
    - i. submit any additional apportionment requests for the BRIC program, including spend plans, to OMB;
    - ii. issue a Fiscal Year 2025 BRIC Notice of Funding Opportunity (NOFO) in compliance with Pub. L. No. 117-58, 135 Stat. 429, 1387 (2021) and 42 U.S.C. § 5133(f);

- iii. issue a Fiscal Year 2026 BRIC NOFO in compliance with Pub. L. No. 117-58, 135 Stat. 429, 1387 (2021) and 42 U.S.C. § 5133(f);
- iv. resolve pending requests for period of performance extensions for BRIC projects;
- v. finalize pending requests to move Phase 1 BRIC projects to Phase 2; and
- vi. finalize pending state management cost grant agreements.

3. Within twenty-one days (21) of this order, Defendants shall issue a BRIC program NOFO for Fiscal Year 2024 in compliance with the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, 1387 (2021) and 42 U.S.C. § 5133(f);<sup>6</sup>

4. Within forty-five (45) days of this order, Defendants shall file a status report with this Court updating the information described in paragraph 1.b. of this order.

5. No part of the relief here ordered is inconsistent with or in any way more limited than the relief ordered on December 11, 2025, in ECF Nos. 129-130.

It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2026.

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THE HONORABLE RICHARD G.  
STEARNS  
United States District Court Judge

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<sup>6</sup> The cancelled Fiscal Year 2024 BRIC NOFO established a submission period of 102 days. Declaration of Amy Laura Cahn, Ex. 2 at 3. The Fiscal Year 2024 BRIC NOFO issued pursuant to this Order must provide a comparable submission period. The Court does not otherwise impose any limitation on the content of the NOFO.