

**U.S. District Court  
District of Columbia (Washington, DC)  
CIVIL DOCKET FOR CASE #: 1:20-cv-01491-APM**

PRAIRIE BAND POTAWATOMI NATION v. MNUCHIN

Assigned to: Judge Amit P. Mehta

Case: 1:20-cv-01002-APM

Cause: 05:0706 Judicial Review of Agency Actions

Date Filed: 06/08/2020

Jury Demand: None

Nature of Suit: 899 Administrative  
Procedure Act/Review or Appeal of  
Agency Decision

Jurisdiction: U.S. Government Defendant

**Plaintiff**

**PRAIRIE BAND POTAWATOMI  
NATION**

represented by **Carol Heckman**  
LIPPES MATHIAS WEXLER  
FRIEDMAN, LLP  
50 Fountain Plaza  
Suite 1700  
BUFFALO  
Buffalo, NY 14202  
716-853-5100  
Fax: 716-853-5199  
Email: [heckman@lippes.com](mailto:heckman@lippes.com)  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**James Peter Blenk**  
LIPPES MATHIAS WEXLER  
FRIEDMAN, LLP  
50 Fountain Plaza  
Suite 1700  
BUFFALO  
Buffalo, NY 14202  
716-853-5100  
Fax: 716-853-5199  
Email: [jblenk@lippes.com](mailto:jblenk@lippes.com)  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Lee Max Redeye**  
LIPPES MATHIAS WEXLER  
FRIEDMAN, LLP  
50 Fountain Plaza  
Suite 1500  
Buffalo, NY 14202  
716-853-5100  
Fax: 716-853-5199  
Email: [redeye@lippes.com](mailto:redeye@lippes.com)

*LEAD ATTORNEY  
PRO HAC VICE  
ATTORNEY TO BE NOTICED*

**Michael G. Rossetti**  
LIPPES MATHIAS WEXLER  
FRIEDMAN LLP  
1900 K Street NW  
Suite 730  
Washington, DC 20006  
202-203-8544  
Email: [mrossetti@lippes.com](mailto:mrossetti@lippes.com)  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**STEVEN T. MNUCHIN**  
*in his official capacity as Secretary,  
United States Department of Treasury*

represented by **Jason C. Lynch**  
U.S. DEPARTMENT OF JUSTICE  
Federal Programs Branch  
1100 L Street NW  
Washington, DC 20005  
202-514-1359  
Email: [Jason.Lynch@usdoj.gov](mailto:Jason.Lynch@usdoj.gov)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Kuntal Virendra Cholera**  
U.S. DEPARTMENT OF JUSTICE  
1100 L. St. NW  
Washington, DC 20005  
(202) 305-8645  
Email: [kuntal.cholera@usdoj.gov](mailto:kuntal.cholera@usdoj.gov)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Amicus**

**GILA RIVER INDIAN COMMUNITY**

represented by **Merrill C. Godfrey**  
AKIN GUMP STRAUSS HAUER &  
FELD LLP  
Robert S. Strauss Tower  
2001 K Street, NW  
Washington, DC 20006  
(202) 887-4000  
Fax: (202) 887-4288  
Email: [mgodfrey@akingump.com](mailto:mgodfrey@akingump.com)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Amicus**

**PENOBSCOT NATION**

represented by **Merrill C. Godfrey**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Amicus**

**MORONGO BAND OF MISSION  
INDIANS**

represented by **Merrill C. Godfrey**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Amicus**

**NOTTAWASEPPI HURON BAND OF  
THE POTAWATOMI**

represented by **Merrill C. Godfrey**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Amicus**

**AGUA CALIENTE BAND OF  
CAHUILLA INDIANS**

represented by **Keith M. Harper**  
KILPATRICK TOWNSEND &  
STOCKTON, LLP  
607 14th Street, NW  
Suite 900  
Washington, DC 20005  
(202) 508-5844  
Fax: (202) 585-0919  
Email: [kharper@kilpatricktownsend.com](mailto:kharper@kilpatricktownsend.com)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Catherine F. Munson**  
KILPATRICK TOWNSEND &  
STOCKTON, LLP  
607 14th Street, NW  
Suite 1100  
Washington, DC 20005  
(202) 508-5800  
Fax: (202) 508-0017  
Email: [cmunson@kilpatricktownsend.com](mailto:cmunson@kilpatricktownsend.com)  
*ATTORNEY TO BE NOTICED*

**Amicus**

**AK-CHIN INDIAN COMMUNITY**

represented by **Keith M. Harper**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Catherine F. Munson**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

Amicus

**ARAPAHO TRIBE OF THE WIND  
RIVER RESERVATION**

represented by **Keith M. Harper**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Catherine F. Munson**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

Amicus

**CHEROKEE NATION**

represented by **Keith M. Harper**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Catherine F. Munson**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

Amicus

**SNOQUALMIE INDIAN TRIBE**

represented by **Keith M. Harper**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Catherine F. Munson**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

Amicus

**YUOK TRIBE OF THE YUOK**

represented by **Keith M. Harper**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Catherine F. Munson**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

Amicus

**CHOCTAW NATION OF  
OKLAHOMA**

represented by **Keith M. Harper**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Catherine F. Munson**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Amicus**

**CHICKASAW NATION**

represented by **Keith M. Harper**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Catherine F. Munson**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Page	Docket Text
06/08/2020	<u>1</u>		COMPLAINT against PRAIRIE BAND POTAWATOMI NATION ( Filing fee \$ 400 receipt number ADCDC-7203772) filed by PRAIRIE BAND POTAWATOMI NATION. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Notice to Counsel/Party, # <u>3</u> Summons)(Rossetti, Michael) (Entered: 06/08/2020)
06/08/2020	<u>2</u>		MOTION for Temporary Restraining Order , MOTION for Preliminary Injunction by PRAIRIE BAND POTAWATOMI NATION (Attachments: # <u>1</u> Declaration Michael G. Rossetti, # <u>2</u> Exhibit Rossetti Declaration-Exhibit A, # <u>3</u> Exhibit Rossetti Declaration-Exhibit B, # <u>4</u> Exhibit Rossetti Declaration-Exhibit C, # <u>5</u> Exhibit Rossetti Declaration-Exhibit D, # <u>6</u> Exhibit Rossetti Declaration-Exhibit E, # <u>7</u> Exhibit Rossetti Declaration-Exhibit F, # <u>8</u> Exhibit Rossetti Declaration-Exhibit G, # <u>9</u> Exhibit Rossetti Declaration-Exhibit H, # <u>10</u> Exhibit Rossetti Declaration-Exhibit I, # <u>11</u> Exhibit Rossetti Declaration-Exhibit J, # <u>12</u> Exhibit Rossetti Declaration-Exhibit K, # <u>13</u> Declaration Joseph P. Rupnick, # <u>14</u> Exhibit Rupnick Declaration-Exhibit A, # <u>15</u> Exhibit Rupnick Declaration-Exhibit B, # <u>16</u> Declaration Eric C. Henson, # <u>17</u> Exhibit Henson Declaration-Exhibit 1, # <u>18</u> Exhibit Henson Declaration-Exhibit 2, # <u>19</u> Text of Proposed Order)(Rossetti, Michael) (Entered: 06/08/2020)
06/08/2020	<u>3</u>		ENTERED IN ERROR.....MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Carol E. Heckman, Lee M. Redeye and James P. Blenk, Filing fee \$ 100, receipt number ADCDC-7204059. Fee Status: Fee Paid. by PRAIRIE BAND POTAWATOMI NATION (Attachments: # <u>1</u> Declaration Carol E. Heckman, # <u>2</u> Declaration Lee M. Redeye, # <u>3</u> Declaration James P. Blenk, # <u>4</u> Text of Proposed Order)(Rossetti, Michael) Modified on 6/8/2020 (zeg). Modified on 6/10/2020 (znmw). (Entered: 06/08/2020)
06/08/2020	<u>4</u>		NOTICE of Appearance by Jason C. Lynch on behalf of STEVEN T. MNUCHIN (Lynch, Jason) (Entered: 06/08/2020)
06/08/2020	<u>5</u>		NOTICE OF RELATED CASE by PRAIRIE BAND POTAWATOMI NATION. Case related to Case No. 20-cv-1002. (zmc) (Entered: 06/08/2020)
06/08/2020			Case assigned to Judge Amit P. Mehta. (zmc) (Entered: 06/08/2020)
06/08/2020	<u>6</u>		NOTICE of Appearance by Kuntal Virendra Cholera on behalf of All Defendants (Cholera, Kuntal) (Main Document 6 replaced on 6/8/2020) (zeg). (Entered: 06/08/2020)
06/08/2020	<u>7</u>		

		SUMMONS (1) Issued Electronically as to STEVEN T. MNUCHIN. (Attachment: # <u>1</u> Notice and Consent)(zmc) (Entered: 06/08/2020)
06/08/2020	<u>8</u>	CERTIFICATE OF SERVICE by PRAIRIE BAND POTAWATOMI NATION re <u>1</u> Complaint, <u>2</u> MOTION for Temporary Restraining Order MOTION for Preliminary Injunction . (Rossetti, Michael) (Entered: 06/08/2020)
06/08/2020		MINUTE ORDER setting a telephonic status conference for today, June 8, 2020, at 3:00 p.m. The courtroom deputy will circulate dial-in information to counsel. Members of the public or media may access the hearing by dialing the court's toll-free public access line: (877) 848-7030, access code 321-8747. Signed by Judge Amit P. Mehta on 06/08/2020. (lcapm2) (Entered: 06/08/2020)
06/08/2020		Set/Reset Hearings: Telephonic Status Conference set for 6/8/2020 at 3:00 PM before Judge Amit P. Mehta. (zjd) (Entered: 06/08/2020)
06/08/2020	<u>9</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Carol E. Heckman, Filing fee \$ 100, receipt number ADCDC-7205259. Fee Status: Fee Paid. by PRAIRIE BAND POTAWATOMI NATION (Attachments: # <u>1</u> Declaration Carol E. Heckman, # <u>2</u> Text of Proposed Order)(Rossetti, Michael) (Entered: 06/08/2020)
06/08/2020	<u>10</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- James P. Blenk, Filing fee \$ 100, receipt number ADCDC-7205304. Fee Status: Fee Paid. by PRAIRIE BAND POTAWATOMI NATION (Attachments: # <u>1</u> Declaration James P. Blenk, # <u>2</u> Text of Proposed Order)(Rossetti, Michael) (Entered: 06/08/2020)
06/08/2020	<u>11</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Lee M. Redeye, Filing fee \$ 100, receipt number ADCDC-7205322. Fee Status: Fee Paid. by PRAIRIE BAND POTAWATOMI NATION (Attachments: # <u>1</u> Declaration Lee M. Redeye, # <u>2</u> Text of Proposed Order)(Rossetti, Michael) (Entered: 06/08/2020)
06/08/2020		NOTICE OF CORRECTED DOCKET ENTRY: re <u>3</u> MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Carol E. Heckman, Lee M. Redeye and James P. Blenk, Filing fee \$ 100, receipt number ADCDC-7204059. Fee Status: Fee Paid. was entered in error and counsel has refiled pleadings. (eg) Modified on 6/9/2020 (znmw). (Entered: 06/08/2020)
06/08/2020		MINUTE ORDER granting <u>9</u> , <u>10</u> , and <u>11</u> Motions for Leave to Appear Pro Hac Vice. Carol E. Heckman, James P. Blenk, and Lee M. Redeye are hereby admitted pro hac vice in this matter on behalf of Plaintiff. <b>Counsel should register for e-filing via PACER and file a notice of appearance pursuant to LCvR 83.6(a). Click for instructions.</b> Signed by Judge Amit P. Mehta on 06/08/2020. (lcapm2). Modified on 6/8/2020 (lcapm2). (Entered: 06/08/2020)
06/08/2020		Minute Entry for proceedings held before Judge Amit P. Mehta: Telephonic Status Conference held on 6/8/2020. Government's Brief due by 7:00 P.M. on 6/10/2020. Motion Hearing set for 6/11/2020 at 3:00 PM via video conference before Judge Amit P. Mehta. The courtroom deputy will circulate dial-in information to counsel. Members of the public or media may access the hearing by dialing the court's toll-free public access line: (877) 848-7030, access code 321-8747. (Court Reporter: William Zaremba) (zjd) (Entered: 06/08/2020)

06/08/2020			MINUTE ORDER. Pursuant to the Telephonic Status Conference held today, June 8, 2020, Defendant shall file its opposition to <u>2</u> Plaintiff's Motion for a Temporary Restraining Order by 7:00 p.m. EST on June 10, 2020. A video conference hearing on Plaintiff's Motion is set for June 11, 2020, at 3:00 p.m. Members of the public or media may access the hearing by dialing the court's toll-free public access line: (877) 848-7030, access code 321-8747. Further, Plaintiff Prairie Band of Potawatomi Nation shall notify the plaintiffs in Agua Caliente Band of Cahuilla Indians, et al. v. Mnuchin, Case No. 20-cv-1136, regarding the filing of this action and the request for a temporary restraining order. Signed by Judge Amit P. Mehta on 06/08/2020. (lcapm2). (Entered: 06/08/2020)
06/09/2020	<u>12</u>		AFFIDAVIT re <u>2</u> MOTION for Temporary Restraining Order MOTION for Preliminary Injunction by PRAIRIE BAND POTAWATOMI NATION. (Attachments: # <u>1</u> Exhibit 1 – OIRA Conclusion, # <u>2</u> Exhibit 2 – Certification Form)(Rossetti, Michael) (Entered: 06/09/2020)
06/10/2020	<u>13</u>		NOTICE of Appearance by James Peter Blenk on behalf of PRAIRIE BAND POTAWATOMI NATION (Attachments: # <u>1</u> Certificate of Service)(Blenk, James) (Entered: 06/10/2020)
06/10/2020	<u>14</u>		NOTICE of Appearance by Carol Heckman on behalf of All Plaintiffs (Heckman, Carol) (Entered: 06/10/2020)
06/10/2020	<u>15</u>		Unopposed MOTION for Leave to File <i>Amicus Brief in Opposition to Plaintiffs Motion for Temporary Restraining Order and Preliminary Injunction</i> by GILA RIVER INDIAN COMMUNITY, PENOBSCOT NATION, MORONGO BAND OF MISSION INDIANS, NOTTAWASEPPI HURON BAND OF THE POTAWATOMI (Attachments: # <u>1</u> Exhibit Proposed Amicus Brief, # <u>2</u> Text of Proposed Order)(Godfrey, Merrill) (Entered: 06/10/2020)
06/10/2020	<u>16</u>		RESPONSE re <u>2</u> MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by STEVEN T. MNUCHIN. (Attachments: # <u>1</u> Declaration)(Cholera, Kuntal) (Entered: 06/10/2020)
06/10/2020	<u>17</u>		NOTICE of Appearance by Catherine F. Munson on behalf of AGUA CALIENTE BAND OF CAHUILLA INDIANS, AK-CHIN INDIAN COMMUNITY, ARAPAHO TRIBE OF THE WIND RIVER RESERVATION, CHEROKEE NATION, SNOQUALMIE INDIAN TRIBE, YUOK TRIBE OF THE YUOK, Chocktaw Nation of Oklahoma, CHICKASAW NATION (Munson, Catherine) (Entered: 06/10/2020)
06/10/2020	<u>18</u>		NOTICE of Appearance by Keith M. Harper on behalf of AGUA CALIENTE BAND OF CAHUILLA INDIANS, AK-CHIN INDIAN COMMUNITY, ARAPAHO TRIBE OF THE WIND RIVER RESERVATION, CHEROKEE NATION, CHICKASAW NATION, Chocktaw Nation of Oklahoma, SNOQUALMIE INDIAN TRIBE, YUOK TRIBE OF THE YUOK (Harper, Keith) (Entered: 06/10/2020)
06/10/2020	<u>19</u>		MOTION for Leave to File <i>Amici Curiae Brief</i> by AGUA CALIENTE BAND OF CAHUILLA INDIANS, AK-CHIN INDIAN COMMUNITY, ARAPAHO TRIBE OF THE WIND RIVER RESERVATION, CHEROKEE NATION, CHICKASAW NATION, Chocktaw Nation of Oklahoma, SNOQUALMIE INDIAN TRIBE, YUOK TRIBE OF THE YUOK (Attachments: # <u>1</u> Brief of Plaintiff Tribes as Amici Curiae, # <u>2</u> Text of Proposed Order)(Harper, Keith)

		(Entered: 06/10/2020)
06/11/2020		MINUTE ORDER granting Motions for Leave to File Amici Curiae Briefs, ECF Nos. <u>15</u> and <u>19</u> . Signed by Judge Amit P. Mehta on 06/11/2020. (lcapm2) (Entered: 06/11/2020)
06/11/2020	<u>20</u>	MEMORANDUM by PRAIRIE BAND POTAWATOMI NATION. (Harper, Keith) (Entered: 06/11/2020)
06/11/2020	<u>21</u>	ERRATA by AGUA CALIENTE BAND OF CAHUILLA INDIANS, AK-CHIN INDIAN COMMUNITY, ARAPAHO TRIBE OF THE WIND RIVER RESERVATION, CHEROKEE NATION, CHICKASAW NATION, Choctaw Nation of Oklahoma, SNOQUALMIE INDIAN TRIBE, YUOK TRIBE OF THE YUOK. (Attachments: # <u>1</u> STATEMENT OF AMICI CURIAE PLAINTIFF TRIBES IN RESPONSE TO COURTS JUNE 11, 2020 HEARING)(Harper, Keith) (Entered: 06/11/2020)
06/11/2020	<u>22</u>	MEMORANDUM OPINION AND ORDER denying <u>2</u> Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction. See the attached Memorandum Opinion and Order for further details. Signed by Judge Amit P. Mehta on 06/11/2020. (lcapm2) (Entered: 06/11/2020)
06/11/2020	<u>23</u>	AMICUS BRIEF by GILA RIVER INDIAN COMMUNITY, MORONGO BAND OF MISSION INDIANS, NOTTAWASEPPI HURON BAND OF THE POTAWATOMI, PENOBSCOT NATION. (eg) (Entered: 06/12/2020)
06/11/2020	<u>24</u>	AMICUS BRIEF by AGUA CALIENTE BAND OF CAHUILLA INDIANS, AK-CHIN INDIAN COMMUNITY, ARAPAHO TRIBE OF THE WIND RIVER RESERVATION, CHEROKEE NATION, CHICKASAW NATION, CHOCTAW NATION OF OKLAHOMA, SNOQUALMIE INDIAN TRIBE, YUOK TRIBE OF THE YUOK. (eg) (Entered: 06/12/2020)
06/12/2020	<u>25</u>	NOTICE of Appearance by Lee Max Redeye on behalf of All Plaintiffs (Redeye, Lee) (Entered: 06/12/2020)
06/15/2020	<u>26</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>22</u> Order on Motion for TRO, Order on Motion for Preliminary Injunction by PRAIRIE BAND POTAWATOMI NATION. Filing fee \$ 505, receipt number ADCDC-7231120. Fee Status: Fee Paid. Parties have been notified. (Rossetti, Michael) (Entered: 06/15/2020)



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

PRAIRIE BAND POTAWATOMI NATION,

Case No.: 20-cv-01491

Plaintiff,

v.

STEVEN T. MNUCHIN, in his official capacity  
as SECRETARY, UNITED  
STATES DEPARTMENT OF THE  
TREASURY,

Defendant.

**NOTICE OF APPEAL**

Notice is hereby given this 15th day of June, 2020, that Prairie Band Potawatomi Nation hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the order of this Court entered on the 11th day of June, 2020 (Doc. 22) denying Prairie Band Potawatomi Nation's motion for a preliminary injunction (Doc. 2) in this matter.

Dated this 15th day of June, 2020.

LIPPES MATHIAS WEXLER FRIEDMAN LLP

Carol E. Heckman\*  
James P. Blenk\*  
Lee M. Redeye\*  
50 Fountain Plaza, Suite 1700  
Buffalo, New York 14202  
Telephone: (716) 560-7744  
checkman@lippes.com  
jblenk@lippes.com  
lredeye@lippes.com  
\*Admitted *Pro Hac Vice*

-and-

33  
/s/ Michael G. Rossetti

Michael G. Rossetti, DC Bar No. 477122

1900 K Street, NW, Suite 730

Washington, DC 20006

Telephone: (202) 888-7610

mrossetti@lippes.com

*Counsel for the Prairie Band Potawatomi  
Nation*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of June, 2020, I electronically filed the foregoing Notice of Appeal by using the CM/ECF system. All parties to the case have been served through the CM/ECF system.

By: *s/Michael G. Rossetti*

33

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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<b>PRAIRIE BAND POTAWATOMI NATION,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 20-cv-1491 (APM)</b>
	)	
<b>STEVEN MNUCHIN, in his official capacity as Secretary of Treasury,</b>	)	
	)	
<b>Defendant.</b>	)	

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**MEMORANDUM OPINION AND ORDER**

Plaintiff Prairie Band Potawatomi Nation asks the court on an emergency basis to enjoin the Secretary of Treasury from disbursing the remaining 40% of \$8 billion that Congress allocated under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) to assist Tribal governments combat the COVID-19 pandemic. *See* Pl.’s Mot., ECF No. 2. The Secretary intends to start disbursing those funds, which total \$3.2 billion, as early as tomorrow, Friday, June 12, 2020, *see* Mem. in Response to Pl.’s Mot., ECF No. 16, at 3, or by no later than Monday, June 15, 2020, *see* Draft 6/11/2020 Hr’g Tr. at 3–5. Plaintiff contends that the Secretary’s initial 60% distribution of CARES Act funds to Tribal governments was arbitrary and capricious under the Administrative Procedure Act (APA), because it relied exclusively on a population data set from the Department of Housing and Urban Development that undercounted Plaintiff’s tribal population and, consequently, resulted in a \$7.65 million underfunding of its proportionate share of CARES

Act funds. *See generally* Pl.’s Mot. For the reasons that follow, Plaintiff’s motion for injunctive relief is denied.<sup>1</sup>

*First*, Plaintiff fails to demonstrate a likelihood of success on the merits. In *Lincoln v. Vigil*, the Supreme Court stated that, “as long as [an] agency allocates funds from a lump-sum appropriation to meet permissible statutory objectives, § 701(a)(2) [of the APA] gives the courts no leave to intrude. ‘To that extent,’ the decision to allocate funds ‘is committed to agency discretion by law.’” 508 U.S. 182, 193 (1993) (citing 5 U.S.C. § 701(a)(2)) (cleaned up); *see also Physicians for Social Responsibility v. Wheeler*, 956 F.3d 634, 642 (D.C. Cir. 2020) (observing that a “presumption of non-reviewability” attaches to an agency’s “allocation of funds from a lump-sum appropriation”) (internal quotation marks omitted). *Lincoln* squarely applies here. Congress appropriated a lump-sum of \$8 billion in CARES Act relief, and directed that “the Secretary shall determine, in consultation with the Secretary of the Interior and Indian Tribes,” amounts paid to Tribal governments “based on increased expenditures of each such Tribal government . . . relative to aggregate expenditures in fiscal year 2019 by the Tribal government . . . and determined in such manner as the Secretary determines appropriate” as to ensure full distribution of the appropriated sum. 42 U.S.C. § 801(c)(7). Congress gave the Secretary no further guidance on how to allocate the emergency relief funds. The CARES Act thus contains no “statutory reference point” by which to judge the Secretary’s decision to use HUD’s population data set, as opposed to some other. *Drake v. FAA*, 291 F.3d 59, 72 (D.C. Cir. 2002). Indeed, as Plaintiff conceded during argument, the CARES Act does not require the Secretary to even

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<sup>1</sup> Of necessity, the court’s Order is not as expansive as it ordinarily would be. The court therefore incorporates by reference the factual background and the injunction standard set forth in *Agua Caliente Band of Cahuilla Indians v. Mnuchin*, No. 20-cv-01136 (APM), 2020 WL 2331774 (D.D.C. May 11, 2020), and *Confederated Tribes of Chehalis Reservation v. Mnuchin*, No. 20-cv-01002 (APM), 2020 WL 1984297 (D.D.C. Apr. 27, 2020).

consider population data, let alone population data of a particular kind. *See* Draft 6/11/2020 Hr’g Tr. at 26–27. The court therefore lacks jurisdiction to consider Plaintiff’s challenge.

*Milk Train, Inc. v. Veneman*, 310 F.3d 747 (2002), does not compel a different result. There, the D.C. Circuit held that the Secretary of Agriculture’s disbursement of funds appropriated to cover milk producers’ “economic losses incurred during 1999” was reviewable, where the plaintiff claimed that the Secretary was using 1997 and 1998 data to calculate 1999 losses. *Id.* at 752. Plaintiff makes no comparable allegation here. It does not allege that the Secretary allocated CARES Act funds for anything other than their stated statutory purpose—to assist Tribal governments to combat the COVID-19 pandemic during the year in which those expenses were incurred.

Plaintiff’s assertion that the Secretary failed to “consult” with Tribes before using the HUD data is also unreviewable. *See* Pl.’s Mot. at 20–24. The CARES Act says nothing about how the Secretary should go about consulting with Indian Tribes, what topics he should address, or with what frequency. *See* 42 U.S.C. § 801(7) (“[T]he Secretary shall determine, in consultation with the Secretary of the Interior and Indian Tribes, [an amount] that is based on increased expenditures of each such Tribal government . . .”). The mere requirement to consult therefore offers no “meaningful standard[] to cabin the agency’s otherwise plenary discretion,” *Drake*, 291 F.3d at 71, and accordingly, the Secretary’s claimed adequate consultation cannot be reviewed.

*Second*, equity favors rejecting emergency relief when a plaintiff unjustifiably delays in bringing suit. *See Newdow v. Bush*, 355 F. Supp. 2d 265, 292 (D.D.C. 2005) (stating that “[a]n unexcused delay in seeking extraordinary injunctive relief may be grounds for denial because such delay implies a lack of urgency and irreparable harm”). Here, the Secretary announced on May 5, 2020, that he had used the HUD data, instead of tribal enrollment figures, to make the first round

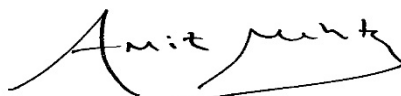
of payments to Tribal governments. Thus, the gravamen of Plaintiff’s complaint—that the Secretary utilized a different methodology than proposed during consultation with the Tribes and one not based on tribal enrollment—was known to Plaintiff since the Secretary’s announcement. Plaintiff did not bring suit, however, until over a month later on June 8, 2020, on the eve of the Secretary’s distribution of the second tranche of CARES Act funds. *See* Compl., ECF No. 1. Plaintiff’s reasons for its delay, *see* Draft 6/11/2020 Hr’g Tr. at 28–30, are unpersuasive. The studies by the Harvard Project on American Indian Economic Development, which Plaintiff claims caused it to realize the extent of its underfunding, were released on May 18, 2020, and May 22, 2022. *See* ECF Nos. 2-17, 2-18. Yet, Plaintiff waited more than two weeks to bring suit after the second study’s release, knowing full well that the Secretary was actively working towards distributing the balance of CARES Act funds. Plaintiff’s unjustified delay forecloses emergency relief.

*Third*, the public interest would be harmed by the requested injunction. Plaintiff seeks to halt all further CARES Act payments to Tribal governments “pending the Court’s consideration of the merits of this action.” Proposed Order, ECF No. 2-19. But it would be patently unfair to make Tribal governments wait any longer to receive the remaining CARES Act funds. The Secretary already has well surpassed the 30-day period within which Congress ordered the distribution of emergency relief to Tribal governments. *See* 42 U.S.C. § 801(b)(1); *see generally* *Agua Caliente Band of Cahuilla Indians v. Mnuchin*, No. 20-cv-01136 (APM), 2020 WL 2331774 (D.D.C. May 11, 2020). And the Secretary, finally, is on the cusp of distributing those funds. The public interest clearly favors the distribution of \$3.2 billion now, and not until after this belatedly filed dispute—involving a meaningful but relatively small amount for one tribe—is resolved.<sup>2</sup>

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<sup>2</sup> The court also declines to order the Secretary to withhold the claimed underfunded amount of \$7.65 million when it is clear that the Secretary’s challenged distribution of a lump-sum appropriation is unreviewable.

For the foregoing reasons, Plaintiff's motion for injunctive relief is denied.

A handwritten signature in black ink that reads "Amit Mehta". The signature is written in a cursive style with a long horizontal stroke at the end.

Dated: June 11, 2019

Amit P. Mehta  
United States District Court Judge