

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AGUA CALIENTE BAND OF)	
CAHUILLA INDIANS, <i>et al.</i>)	
)	Case No. 1:20-cv-01136 (APM)
Plaintiffs,)	
)	
v.)	Plaintiffs' Amended Motion
)	for Temporary Restraining
)	Order, Preliminary
MNUCHIN,)	Injunction, and Emergency Writ
)	of Mandamus
Defendant.)	

Plaintiffs the 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, and the Yurok Tribe of the Yurok Reservation (Plaintiffs or Plaintiff Tribes) hereby move for a temporary restraining order, preliminary injunction, and emergency writ of mandamus directing the Defendant, Treasury Secretary Steven Mnuchin (the Secretary), to immediately comply with his mandatory, non-discretionary statutory duty to disburse congressionally appropriate pandemic relief funding to Plaintiffs.¹ Defendant's continuing, unreasonable delay in performing his clear duty has caused and is continuing to cause irreparable harm to Plaintiffs that can only be remedied by the immediate entry of the requested relief.

¹ This Amended Brief is nearly identical to the Brief Plaintiffs filed on May 1, 2020 seeking the same relief (Doc. 4), except for the for citations to the declarations of the newly added plaintiffs, the Chickasaw Nation and Choctaw Nation of Oklahoma. It also makes necessary updates to today's date and corrects a single citation error to a declaration.

BACKGROUND

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136, was passed by Congress and signed by the President on March 27, 2020, to provide desperately needed relief from the economic effects of the novel coronavirus pandemic (COVID-19). Among many other things, the CARES Act appropriated \$8 billion for “payments to Tribal governments.” 42 U.S.C § 801(a)(2)(B). These funds are referred to herein as Title V funds, after their location in the text of the CARES Act. The CARES Act went on mandate that “not later than 30 days after March 27, 2000, the Secretary shall pay each State and Tribal government” the amount of Title V funds that each such entity is entitled to receive. *Id.* § 801(b)(1). The Act left the Secretary some measure of discretion to determine, in consultation with the Department of the Interior and Tribal governments, the amount of Title V funding for each Tribal government. *See id.* § 801(c)(7). However, reflecting Congress’s recognition of Indian Country’s desperate and immediate need for funding, it left no discretion as to the timing of those payments. *See* § 801(b)(1). As of May 3, 2020—37 days after March 27, 2020—no Title V funds have been disbursed to Plaintiffs or any other Tribal government as required by the Act.

The Plaintiffs in this action are Tribal governments entitled to have Title V funds disbursed to them no later than April 26, 2020. *See id.* §§ 801(b)(1), 801(g) (defining “Indian Tribe” and “Tribal government”). They provide extensive governmental services to their members, oversee the operation of tribal businesses and economic enterprises, and have expended and are expending substantial unbudgeted funds to support their members, their employees, and their communities in fighting the public health emergency resulting from COVID-19. *See* Declaration of Robert Miguel ¶¶ 4-7; Declaration of Joseph L. James ¶¶ 4-6; Declaration of Chuck Hoskin, Jr. ¶¶ 3-7; Declaration of Ryan Ortiz ¶¶ 6-9; Declaration of John Plata ¶¶ 4-6; Declaration of Robert M. de los Angeles

¶¶ 4-6; Declaration of Gary Batton, ¶¶ 2, 4, 5; Declaration of Stephen Greetham, ¶¶ 3, 5, 7.² As a result of COVID-19, the revenue streams that typically fund Plaintiffs' provision of governmental services and that would be used to combat a public health emergency have been severely curtailed or eliminated in recent weeks. Miguel Decl. ¶ 7; James Decl. ¶¶ 4-5, 7-8; Hoskin Decl. ¶¶ 5, 7; Ortiz Decl. ¶ 10; Plata Decl. ¶ 8; de los Angeles Decl. ¶ 8; Batton Decl. ¶6; Greetham Decl. ¶¶ 6, 7. Each Plaintiff has submitted requested data to the Department of the Treasury to secure Title V funds for emergency COVID-19 relief measures. *See, e.g.*, Miguel Decl. ¶ 8; James Decl. ¶ 2; Ortiz Decl. ¶ 4; Plata Decl. ¶ 9; de los Angeles Decl. ¶ 9. As of the date of this filing, none of the Plaintiffs have received Title V funds that they were entitled to receive "not later than" April 26, 2020. 42 U.S.C. § 801(b)(1). *See, e.g.*, Miguel Decl. ¶ 8; James Decl. ¶¶ 6, 8; Hoskins Decl. ¶ 7; Ortiz Decl. ¶ 4; Plata Decl. ¶ 9; de los Angeles Decl. ¶ 10; Batton Decl. ¶ 6; Greetham Decl. ¶ 8, 9.

Further delay in receiving this desperately needed funding threatens the Plaintiffs' ability to continue funding governmental and employee services and the fight against COVID-19 in their communities. Specifically, the Plaintiff Tribal governments will be forced to further curtail essential governmental services and/or furlough or lay off substantial numbers of employees. *See, e.g.*, Miguel Decl. ¶ 9; James Decl. ¶¶ 6-9; Hoskins Decl. ¶ 7; Ortiz Decl. ¶ 11; Plata Decl. ¶ 10; de los Angeles Decl. ¶ 11; Batton Decl. ¶ 6; Greetham Decl. ¶¶ 8, 9. Accordingly, the Plaintiffs seek a temporary restraining order, preliminary injunction, and writ of mandamus directing the Secretary to immediately disburse appropriated funds to Plaintiff Tribes in accordance with the express directive of the CARES Act.

² All referenced declarations are being filed contemporaneously with this motion.

ANALYSIS

I. Plaintiffs are entitled to a temporary restraining order and preliminary injunction.

The Secretary's ongoing refusal to disburse Title V funds to assist the Plaintiffs in combatting the COVID-19 pandemic, as required by law, is irreparably injuring Plaintiffs and is on the verge of causing catastrophic harm to their members and communities. Plaintiffs seek, and are entitled to, a temporary restraining order and preliminary injunction ordering the Secretary to take immediate action to carry out his clear statutory duty.

To obtain injunctive relief, a movant must demonstrate: (1) likely success on the merits; (2) likely irreparable harm in the absence of the requested relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest. *League of Women Voters*, 838 F.3d at 6 (quoting *Pursuing Am.'s Greatness v. FEC*, 831 F.3d 500, 505 (D.C. Cir. 2016)); accord *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). "The same standard applies for both temporary restraining orders and preliminary injunctions." *Experience Works, Inv. v. Chao*, 267 F. Supp. 2d 93, 96 (D.D.C. 2003) (citing *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)). The standard is a balancing test, meaning that "[i]f the showing in one area is particularly strong, an injunction may issue even if the showings in other areas are rather weak." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.D.C. 2006); *Council on American-Islamic Relations v. Gaubatz*, 667 F. Supp.2d 67, 74 (D.D.C. 2009) (*CAIR*). Plaintiffs meet all four factors and will continue to suffer irreparable injury unless the Secretary is ordered to disburse unlawfully withheld emergency relief funds immediately.

A. Plaintiffs will likely succeed on the merits of their claim.

Plaintiffs' claims derive from the CARES Act's explicit mandate that the Secretary distribute Title V funds to Tribal governments by April 26, 2020. 42 U.S.C. § 801 (b)(1).

Generally, in cases involving a statute, the “Court must first look to the language of the statute itself to resolve the controversy” *Tax Analysts and Advocates v. IRS*, 362 F. Supp. 1298, 1303 (D.D.C. 1973); *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 98 (2003) (stating that the “starting point” for statutory analysis “is the statutory text”); *St. Paul Fire & Marine Ins. Co. v. Barry*, 439 U.S. 531, 541 (1978) (“The starting point in any case involving construction of a statute is the language itself.”). In this instance, this Court has already determined that the plain language of the CARES Act mandates disbursement of Title V funds by April 26, 2020. *Confederated Tribes of the Chehalis Reservation v. Mnuchin*, No. 20-cv-01002 (APM), 2020 WL 1984297, at *2 (D.D.C. Apr. 27, 2020) (citing 42 U.S.C. § 801(b)(1)). The Secretary has not met that clear statutory deadline with respect to any of the Plaintiffs, none of whom have received Title V funds as of Friday, May 1, 2020.³ See Miguel Decl. ¶ ; James Decl. ¶¶ 6, 8; Hoskins Decl. ¶ 7; Ortiz Decl. ¶ 4; Plata Decl. ¶ 9; de los Angeles Decl. ¶ 10; Batton Decl. ¶ 6; Greetham Decl. ¶¶ 8, 9. Because the Secretary’s refusal to timely disburse Title V funds to Plaintiffs (and other Indian Tribal governments) plainly and indisputably violates a direct and explicit congressional mandate, the Plaintiffs are certain to succeed on the merits of their claim. This factor thus weighs heavily in favor of a temporary restraining order and preliminary injunctive relief.

B. Plaintiffs will suffer irreparable harm absent injunctive relief

In light of the current COVID-19 public health crisis and Plaintiffs’ inability to provide essential governmental services and pandemic relief and continue operating tribal businesses without Title V funds, it is indisputable that Plaintiffs will suffer irreparable harm as a result of the

³ All Plaintiffs complied with all administrative requisites for receiving Title V funds, particularly by completing a Certification for Requested Tribal Data before the Secretary’s April 17, 2020 deadline. See, e.g., Miguel Decl. ¶ 8; James Decl. ¶ 2; Ortiz Decl. ¶ 4; Plata Decl. ¶ 9; de los Angeles Decl. ¶ 9.

Secretary's ongoing dereliction of his statutory obligation. Establishing irreparable harm requires showing an injury that is "both certain and great, actual and not theoretical, beyond remediation, and of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm." *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (emphasis and internal quotation marks omitted). Further, "[i]f a plaintiff has shown that financial losses are certain, imminent, and unrecoverable, then the imposition of a preliminary injunction is appropriate and necessary" *Nat'l Min. Ass'n v. Jackson*, 768 F. Supp.2d 34, 54 (D.D.C. 2011). If the Secretary is allowed to continue withholding Title V funds, the Plaintiffs are certain to suffer severe and actual, irreparable injury.

Plaintiffs provide essential government services to their tribal members, including, but not limited to, healthcare, housing, education, social and welfare services, child protective services, food distribution, heating assistance, law enforcement, fire and emergency response, environmental regulatory services, water and water treatment, judicial services, job placement assistance, building inspection services, and social and cultural preservation facilities and programs. *See, e.g.*, Miguel Decl. ¶¶ 4, 6; James Decl. ¶ 6; Hoskin Decl. ¶ 3; Ortiz Decl. ¶ 6; Plata Decl. ¶ 4; de los Angeles Decl. ¶ 4; Batton Decl. ¶ 2; Greetham Decl. ¶¶ 5, 7. To fund these services, Plaintiffs rely heavily on revenues generated from various business enterprises. *See, e.g.*, Miguel Decl. ¶¶ 5, 7, 9; James Decl. ¶¶ 4-8; Hoskin Decl. ¶¶ 4-6; Ortiz Decl. ¶ 10; Plata Decl. ¶ 8; de los Angeles Decl. ¶ 8; Batton Decl. ¶¶ 4-6; Greetham Decl. ¶ 5. With the onset of COVID-19, Plaintiffs were forced to close or substantially curtail many of their commercial businesses and place their tribal employees on administrative leave. Miguel Decl. ¶¶ 4, 7; James Decl. ¶¶ 5, 7; Hoskin Decl. ¶¶ 4-5; Ortiz Decl. ¶ 10; Plata Decl. ¶¶ 5, 8; de los Angeles Decl. ¶¶ 5, 8; Batton Decl. ¶ 4; Greetham Decl. ¶ 6. Moreover, to prevent the spread of COVID-19 and to protect their

members and surrounding communities, Plaintiffs have incurred substantial additional, unbudgeted expenses by procuring and distributing personal protective equipment (PPE), cleaning and sanitation supplies, food, and other essential items to their members, waiving rent at tribal housing facilities, constructing and staffing temporary medical facilities, purchasing medical supplies, and taking other, similar measures. Miguel Decl. ¶ 6; James Decl. ¶¶ 6-7; Hoskin Decl. ¶ 6; Ortiz Decl. ¶ 9; Plata Decl. ¶ 6; de los Angeles Decl. ¶ 6; Batton Decl. ¶ 5; Greetham Decl. ¶¶ 7-8.

Any further delay in emergency relief funding from the CARES Act will cause irreparable harm by requiring Plaintiffs to further curtail essential government services and furlough or lay off employees. *See, e.g., Mercury Cos., Inc. v. First Am. Corp.*, No. 08-CV-00911, 2008 WL 4861950, at *8 (D. Col. Nov. 10, 2008) (citing prospective employee layoffs as a factor supporting a finding of irreparable injury); *Lycoming Engines v. Precision Automotive, LLC*, No. CO7-1854RSL, 2008 WL 313901, at *2 (W.D. Wash. Feb. 4, 2008) (citing employee layoffs and loss of customer goodwill as irreparable harm). Given that tribal members rely substantially on the services provided by the Plaintiffs and many tribal members and non-members alike rely on tribal enterprises for employment and health insurance, the detrimental impacts of these actions will be tremendous, causing unquestionable and irreparable harm to Plaintiffs and their members, employees, businesses, and communities.

Once these injuries are incurred, and as they continue to incur, no form of remediation will be sufficient to redress them. Distributing the Title V funds at a later date will help, but it will not undo the harm suffered in the interim as Plaintiffs and other Tribal governments are forced to curtail essential governmental services and part ways with valued staff and employees. In sum, the

irreparable harm factor overwhelmingly supports Plaintiffs' entitlement to emergency injunctive relief.

C. The balance of the equities and the public interest favor injunctive relief.

The Secretary's failure to timely disburse Title V funds that Plaintiffs desperately need to combat COVID-19 and its effects greatly tips the balance of equities and public interest in favor of injunctive relief. Where, as here, the federal government is the opposing party, the balance of equities and public interest factors merge.⁴ See *Nken v. Holder*, 556 U.S. 418, 434 (2009); *Jubilant DraxImage, Inc. v. U.S. Int'l Trade Comm'n*, 396 F. Supp. 3d 113, 120 (D.D.C. 2019). Thus, "the balance of the equities requires the court to weigh the harm to Plaintiffs if there is no injunction against the harm to the Treasury Department if there is." *Confederated Tribes of the Chehalis Reservation*, 2020 WL 1984297, at *8 (citing *Pursuing Am.'s Greatness*, 831 F.3d at 511). Because the Secretary's harm and the public interest "are one and the same," *id.* (internal quotations omitted), Plaintiffs have sufficiently shown that this factor weighs in their favor.

As this Court has correctly noted, Congress "appropriated [Title V funds] on an emergency basis to assist Tribal governments in providing core public services to battle a pandemic that is ravaging the nation, including in Indian country." *Confederated Tribes of the Chehalis Reservation*, 2020 WL 1984297, at *8. Congress made a considered judgement that the public interest favored the rapid disbursement of this urgently needed emergency funding. The Secretary's failure to heed Congress's mandate is having, and will continue to have, devastating effects on Plaintiffs and all of Indian country. No equities and no public interest favor delay, and

⁴ Although Plaintiff Tribes have identified a case that contends that merging these factors under *Nken* is not applicable to temporary or preliminary injunctive relief, *Singh v. Carter*, 168 F. Supp. 3d 216, 234 (D.D.C. 2016), the balance of equities and public interest, weighed separately, still favor injunctive relief.

no excuse that the Secretary might offer for his delay could tip the balance of these factors against Plaintiffs. Accordingly, the balance of equities and public interest strongly favor injunctive relief.

In sum, all of the relevant considerations weigh heavily in favor of emergency injunctive relief. This Court should enter a temporary restraining order and preliminary injunction ordering the Secretary to immediately disburse Title V funds to Plaintiffs to support their emergency COVID-19 relief efforts. The Secretary has already ignored Congress's expressed sense of urgency and its mandate to act, and the cost of his continued failure to do so will be measured in health, welfare, and potentially lives of tribal members.

D. Plaintiffs should not be required to post a bond.

Although Rule 65(c) typically requires courts to impose a security bond when issuing a temporary restraining order, it is well settled that district courts have broad discretion as to the amount of the bond and that this discretion includes the authority to waive the bond altogether in appropriate circumstances. *See, e.g., DSE, Inc. v. United States*, 169 F.3d 21, 33 (D.C. Cir. 1999); *Human Touch DC, Inc. v. Merriweather*, 2015 WL 12564162, at *3 (D.D.C. May 18, 2015) (waiving bond requirement); *CAIR*, 667 F. Supp. 2d at 81; *Cobell v. Norton*, 225 F.R.D. 41, 50 n.4 (D.D.C. 2004) (“[I]t is within the Court’s discretion to waive Rule 65’s security requirement where it finds such a waiver to be appropriate in the circumstances.”). Waiver of any security bond is plainly appropriate here, where the Plaintiff Tribes have demonstrated an overwhelming likelihood of success on the merits and there is minimal risk of harm to the Defendant, who will be compelled only to comply with the explicit language of a statute compelling him to disburse urgently needed relief funds. Indeed, requiring the Plaintiffs to make a payment in order to obtain the relief of unjustly withheld emergency financial aid would be nothing short of a perverse outcome, and

clearly was not what Congress had in mind in passing the CARES Act. The Court should exercise its discretion to waive any security requirement under Rule 65(c).

II. Plaintiffs are entitled to a writ of mandamus.

Plaintiffs are entitled to a writ of mandamus directing the immediate disbursement of Title V funds that Congress appropriated for Tribal governments in the CARES Act. While mandamus “is an extraordinary remedy reserved for extraordinary circumstances,” the D.C. Circuit has recognized that those circumstances exist in cases of “transparent violations of a clear duty to act.” *In re Am. Rivers & Idaho Rivers Utd.*, 372 F.3d 413, 418 (D.C. Cir. 2004) (citation omitted); *see also In re People’s Mojahedin Org. of Iran*, 680 F.3d 832, 836 (D.C. Cir. 2012). In cases of agency inaction, the existence of a clear duty to act must be coupled with evidence of unreasonable agency delay in taking action. *People’s Mojahedin*, 680 F.3d at 836. To determine whether an agency has delayed acting in a manner justifying mandamus relief, this Circuit uses a standard established in *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) (*TRAC*). The *TRAC* standard provides that: (1) the time an agency takes to act must be governed by a “rule of reason”; (2) the content of the rule of reason may be supplied by Congress when a statute provides a timetable or other indicia of the speed with which Congress expects the agency to act; (3) delays that might be reasonable in the context of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of ordering expedited agency action on other agency activities of higher or competing priority; (5) the court should take into account the nature and extent of the interests prejudiced by delay; (6) the court need not find any impropriety behind agency inaction in order to find that the agency has unreasonably delayed acting. *Am. Rivers*, 372 F.3d at 418 (citing *TRAC*, 750 F.2d at 80). In this case, this standard overwhelmingly supports mandamus.

The first two factors of the *TRAC* standard should be considered together where, as here, Congress has explicitly mandated that the Secretary is to act by a certain date. The D.C. Circuit has held that congressional imposition of a specific and short deadline for agency action manifestly demonstrates congressional intent that the agency act swiftly. *People's Mojehedin*, 680 F.3d at 837. Here, Congress recognized the crisis nature of the COVID-19 public health emergency and consequently established a very specific and stringent deadline for the Secretary to disburse desperately needed Title V funds. By failing to meet that deadline, the Secretary has unreasonably delayed action in violation of Congress's explicit mandate and to the extreme detriment of Plaintiffs and other Tribal governments. *See id.* ("Congress undoubtedly knew the enormous demands placed upon the Secretary and nonetheless limited her time to act"). The first two prongs of the *TRAC* standard thus support mandamus relief.

The third and fifth prongs of the *TRAC* standard are closely related here, and both support mandamus. Title V funds are explicitly intended to assist Tribal governments like the Plaintiffs in responding to a global pandemic that has created a public health emergency of staggering proportions. These funds—and their immediate availability—directly and tangibly implicate human health and welfare because they will effect Plaintiffs' ability to continue providing wages, health benefits, and essential governmental services to their members and employees and to engage in COVID-19 safety and relief measures such as cleaning facilities, providing food assistance and medical care to tribal members and staff in need, and acquiring and providing PPE and sanitation supplies. *See, e.g.*, Miguel Decl. ¶¶ 6-7, 9; James Decl. ¶¶ 6-8; Hoskin Decl. ¶¶ 6-7; Ortiz Decl. ¶¶ 9-11; Plata Decl. ¶¶ 6, 10; de los Angeles Decl. ¶¶ 8, 11; Batton Decl. ¶¶ 4-6; Greetham Decl. ¶¶ 5, 7-9. *see also Muwekma Tribe v. Babbitt*, 133 F. Supp. 2d 30, 39 (D.D.C. 2000) (holding third and fifth factors weighed in favor of mandamus relief where delay of government agency denied

tribal members the ability to receive services designed to benefit their health and welfare); *Geneme v. Holder*, 935 F. Supp. 2d 184, 194 (D.D.C. 2013) (finding third and fifth factors weighed in plaintiff's favor where delay of government agency restricted plaintiff's ability to plan for her future and stating that this uncertainty had a "substantial and substantially negative impact on her welfare and her peace of mind."). These would be compelling interests at any time, but they are all the more so against the backdrop of the ongoing public health emergency that precipitated and necessitated the appropriation of Title V funds and prompted the congressional mandate for their expedient disbursement. Human health and well-being are unquestionably at stake, and the Defendant's ongoing flouting of Congress's mandate for the disbursement of Title V emergency relief funds is frustrating Plaintiffs' and other Tribal governments' interests in and efforts in protecting the health and well-being of their members and communities. *See, e.g.*, Miguel Decl. ¶ 9; James Decl. ¶¶ 6-9; Hoskins Decl. ¶ 7; Ortiz Decl. ¶ 11; Plata Decl. ¶ 10; de los Angeles Decl. ¶ 11; Batton Decl. ¶ 6; Greetham Decl. ¶¶ 5-9. The third and fifth *TRAC* considerations thus weigh heavily in favor of mandamus relief.

The fourth *TRAC* consideration—the effect of ordering expedited agency action on agency actions of higher or competing priority—also weighs in favor of mandamus. The CARES Act appropriated and directed the disbursement of funds for a number of critical COVID-19 relief measures, including a total of \$150,000,000,000 for state, Tribal, and local governments in fiscal year 2020. *See* 42 U.S.C. § 801(a)(1). The Act established identical timelines—within 30 days of its enactment—for distributing money to states and Tribal governments, indicating that Congress viewed distributions to both recipients as having equal urgency. *See* § 801(b)(1). And it goes without saying that the rapid distribution of these funds to aid state, Tribal, and local governmental efforts to combat a national public health emergency is and should be among the Secretary's

highest priorities—hence the congressional mandate that the funds be disbursed so quickly. To date, however, while the Secretary has moved forward with disbursing Title V funds to state and local governments, Plaintiffs are unaware of any disbursements to Tribal governments. *Cf. SAI v. Dep't of Homeland Sec.*, 149 F. Supp. 3d 99, 121 (D.D.C. 2015) (quoting *Open Am. v. Watergate Special Prosecution Force*, 547 F.2d 605, 614–15 (D.C. Cir. 1976) (finding fourth factor weighed in favor of granting plaintiff relief where it was not a case in which plaintiff was seeking to “upend a ‘first-in, first-out’ procedure by attempting to ‘automatically go to the head of the line at the agency’”). Rather than impeding higher priority activities by the Secretary, a court order directing the timely, congressionally mandated disbursement of Title V funds to Tribal governments apparently is needed to prevent the Secretary from continuing to shirk his duty to make those distributions in favor of other priorities to Plaintiffs’ severe and continuing detriment and harm.

The final *TRAC* consideration does not weigh for or against mandamus; it simply reminds the Court that it need not find any impropriety behind the Secretary’s inaction in order to grant mandamus relief. Plaintiffs do not believe that the Secretary is acting maliciously or with improper motivation, but that is irrelevant to the fact that he has violated a clear, mandatory statutory duty concerning a matter of utmost urgency and importance to Plaintiffs, other Tribal governments, and Congress. The Secretary is plainly noncompliant with an urgent, mandatory duty, and each additional day that he continues to delay in fulfilling that duty—regardless of the reason for his failure—will have tangible adverse effects on the health and welfare of tribal members and employees throughout this country.

CONCLUSION

In passing and signing the CARES Act, Congress and the President expressed a clear understanding of the urgent need for COVID-19 relief funding in Indian country. Based on that

urgent need, Congress explicitly and unequivocally directed the Secretary to disburse \$8 billion in emergency funding to Indian Tribal governments “no later than” April 26, 2020—a mere 30 days after passage of the Act. It is now May 3, 2020. While the Secretary has made substantial distributions to state and local governments, he has not made any of the mandated distributions to Tribal governments, nor has he committed to do so by any date certain. Each day of additional, unlawful, and unreasonable delay has very real and very substantial consequences for the health and welfare of tribal members and communities. This must not continue. The Court can and should enter a temporary restraining order and preliminary injunction and issue a writ of mandamus directing the Secretary to immediately disburse desperately needed Title V COVID-19 relief funds to Plaintiffs as directed by the CARES Act.

ORAL ARGUMENT REQUESTED.

Respectfully submitted May 3, 2020.

/s/ Keith M. Harper
Keith M. Harper, DC Bar No. 451956
Catherine F. Munson, DC Bar No. 985717
Mark H. Reeves, DC Bar No. 1030782

KILPATRICK TOWNSEND & STOCKTON LLP
607 14th Street, N.W.
Suite 1100
Washington, D.C. 20006
Tel: 202-508-5800
Fax: 202-508-5858

Rob Roy Smith (*pro hac vice* motion
forthcoming)
WSBA No. 33798
KILPATRICK TOWNSEND & STOCKTON LLP
1420 Fifth Avenue, Suite 3700
Seattle, Washington 98101
Tel: (206) 467-9600
Fax: (206) 623-6793

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May, 2020, I electronically filed the forgoing Plaintiffs' Amended Motion for Temporary Restraining Order, Preliminary Injunction, and Emergency Writ of Mandamus (Plaintiffs' Amended Motion) with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered CM/ECF users.

In addition, a true and correct copy of Plaintiffs' Motion, along with supporting declarations, and all copies of all pleadings and papers filed in the action to date will be sent tomorrow by UPS overnight mail to the following:

Steven Mnuchin, Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

I also emailed a copy of Plaintiffs' Amended Motion, and the accompanying declarations to Jason Lynch, Jason.Lynch@usdoj.gov, based on the understanding that Mr. Lynch represents the United States in this matter.

/s/ Keith M. Harper
Keith M. Harper