CASE NO. 20-5286

IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

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THE SHAWNEE TRIBE,
*Plaintiff-Appellant,*

v.

STEVEN MNUCHIN, SECRETARY,
UNITED STATES DEPARTMENT OF
TREASURY; UNITED STATES
DEPARTMENT OF THE TREASURY;
DAVID BERNHARDT, SECRETARY,
UNITED STATES DEPARTMENT OF
INTERIOR; UNITED STATES DEPARTMENT
OF INTERIOR,
*Defendants-Appellees.*

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On Appeal from the United States District Court for the
District of Columbia
Case No. 1:20-cv-01999-APM (Hon. Amit P. Mehta)

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**PLAINTIFF-APPELLANT'S EMERGENCY MOTION
FOR APPLICATION OF A STAY OR INJUNCTION
AND MOTION FOR EXPEDITED BRIEFING AND RESOLUTION**

Pursuant to Federal Rule of Appellate Procedure 8 and D.C. Circuit Rule 8, or in the alternative F.R.A.P. Rule 18(a)(2), Plaintiffs-Appellants the Shawnee Tribe ("The Shawnee Tribe" or "Tribe") moves this Court for emergency injunctive relief or a stay pending its appeal of the district court's order denying

the Tribe's Motion for a Preliminary Injunction. Plaintiffs request that this Court grant emergency injunctive relief enjoining the Secretary from disbursing, and ultimately depleting, $12 million in CARES Act funds appropriated by Congress pending the outcome of this appeal. The Tribe also requests that the Court set an expedited briefing schedule as contemplated in Rule 27(a)(3).

## I. PRELIMINARY STATEMENT

This expedited appeal has been fully briefed and the Court held oral argument only one week ago. Since that time, a development in a related case has necessitated the Tribe's request to seek emergency injunctive relief with this Court. In short, another tribe has moved to compel the Secretary to disburse millions of dollars of CARES Act funds. If the Secretary does so, the Tribe would be irreparably harmed because those funds will be forever dissipated and unable to be recovered.

## II. FACTUAL AND PROCEDURAL BACKGROUND

### A. Facts

This case involves the allocation of funds appropriated by Congress under Title V of the CARES Act- Coronavirus Relief Fund (CRF). Congress appropriated $8 billion in the CARES Act CRF to provide economic relief for necessary expenditures incurred by "Tribal Governments" impacted by the COVID-19 pandemic. 42 U.S.C. § 801(a)(2)(B). The Shawnee Tribe is a federally recognized

Tribal Government, as defined in Title V, and is entitled to CARES Act CRF funds based on its increased COVID-19 expenditures. [Dkt. 2, Verified Compl., ¶ 10].

In its appropriation, Congress directed the Secretary of Treasury to pay Title V CRF funds to each Tribal government in an "amount the Secretary shall determine" based on "increased expenditures." Under Title V, the Secretary's determination was: (1) expressly contingent on "consultation with the Secretary of the Interior and Indian Tribes;" (2) required to be "based on increased expenditures of each such Tribal government … relative to aggregate expenditures in fiscal year 2019 by the Tribal government;" and (3) was required to "ensure that all amounts available under subsection (a)(2)(B) for fiscal year 2020 are distributed to Tribal governments." 42 U.S.C. § 801(c)(7). Title V of the CARES Act also expressly limited the use of the funds to "necessary expenditures … with respect to the Coronavirus Disease 2019 (COVID–19) … incurred during the period that begins on March 1, 2020, and ends on December 30, 2020." *Id.* § 801(a)(1), (b)(1), (d).

## B. Procedural Background

### 1. *Injunctive Relief Requested in the District Court*

On June 18, 2020, the Tribe filed a Verified Complaint, seeking declaratory and injunctive relief and a Motion for Temporary Restraining Order (the "Motion") in the Northern District Court of Oklahoma. [*See generally* S-App'x 28-73]. On June 29, 2020, the Oklahoma District Court denied the Motion and converted the

Motion to one for preliminary injunctive relief. The case was then transferred to the United States District Court of the District of Columbia ("District Court") on July 28, 2020, where other cases involving the CARES Act were being litigated.

After briefing and oral argument, on August 19, 2020, the District Court entered an order denying the Motion for Preliminary Injunction. [S-App'x 1-10, Dkt. 43 (*Shawnee Tribe v. Mnuchin*, No. 20-cv-1999 (APM), 2020 WL 4816461, at *5 (D.D.C. Aug. 19, 2020). The District Court acknowledged that The Shawnee Tribe would suffer irreparable harm absent injunctive relief in its decision. [S-App'x 2, Dkt. 43 at *8 n.3].

On September 10, 2020, the District Court granted the Secretary's Motion to Dismiss. [S-App'x 13-20, Dkt. 48, pp. *3, 8]; *see also Shawnee Tribe*, 2020 WL 4816461, at *4 n.3. The Shawnee Tribe filed a timely appeal to this Court. The Tribe also moved for an expedited briefing schedule and resolution of this appeal. That motion was granted on September 25, 2020. The parties filed briefs consistent with this schedule and the Court held oral argument on December 4, 2020.

2. *The Motion for Issuance of a Mandate in* Chehalis

Three days after oral arguments in this case concluded, the Ute Indian Tribe of the Uintah and Ouray Reservation in the matter captioned as *Confederated Tribes of the Chehalis v. Secretary Mnuchin*, Consolidated cases 20-5204, 20-5205, 20-5209, filed a "Motion for Issuance of Mandate and Order Requiring the

United States to Promptly Comply with the Mandate" (the "Chehalis Motion"). *See* attached at **Exhibit A**. The Chehalis Motion moved the Court for issuance of a mandate and an order requiring the Secretary to "promptly comply" with that mandate. *See id.* at 2. The motion noted that time was of the essence, and that a mandate was required promptly because "[u]nder the CARES Act, the Tribes must not only receive the money, they must also spend or 'incur' expenditure of the funds by **December 30, 2020."** *Id.* at 3 (emphasis in original) *citing* 42 U.S.C. 801(d)(3). The Chehalis Motion remains pending and as the date of this filing has not yet been ruled upon.

The Shawnee Tribe prepared and filed this motion promptly after learning of the filing of the Chehalis Motion. If the relief sought by the Chehalis Motion is granted, the Secretary will promptly disburse funds that would otherwise be payable to The Shawnee Tribe in this matter. In light of the relief sought in the Chehalis Motion, the Shawnee Tribe risks losing any opportunity to obtain a meaningful remedy. The Tribe respectfully move this Court to enjoin Defendant from depleting $12 million in the remaining CARES Act CRF funds during the pendency of this appeal.

## III. ARGUMENT

### A. This Court should enjoin the Secretary from unlawfully distributing the remaining CARES Act funds during the pendency of this appeal.

#### 1. *Standard for emergency injunctive relief pending appeal*

To succeed on a motion for emergency injunctive relief pending appeal, the moving party must satisfy the same factors necessary to prevail on a motion for preliminary injunctive relief before a district court: "(1) a substantial likelihood of success on the merits, (2) that [the movant] would suffer irreparable injury if the injunction were not granted, (3) that an injunction would not substantially injure other interested parties, and (4) that the public interest would be furthered by the injunction." *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1066 (D.C. Cir. 1998); *see also* D.C. Cir. R. 8(a).

The Court also has historically employed a "sliding-scale" approach to weighing the four preliminary injunction factors, which "allow[s] that a strong showing on one factor could make up for a weaker showing on another." *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011); *League of Women Voters of United States v. Newby*, 838 F.3d 1, 7 (D.C. Cir. 2016).[1]

[1] The Court has not yet decided whether this sliding-scale approach remains valid after *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 51, 129 S. Ct. 365, 392, 172 L. Ed. 2d 249 (2008). *See League of Women Voters of United States v. Newby*, 838 F.3d 1, 7 (D.C. Cir. 2016) (passing on resolving that issue because the plaintiff had successfully met each of the preliminary injunction elements); *Archdiocese of*

2. *The Tribe is Likely to Succeed on the Merits of their Appeal*

Under the first factor the movant must show it will likely succeed on the merits of its appeal. See *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958) (per curiam). The Tribe is likely to succeed on the merits of their appeal both for the reasons previously briefed in this case and based upon the issues that arose during oral arguments.

*First*, the Secretary used an elective federal housing program formula that falsely reported The Shawnee Tribe's population was zero for the purposes of distributing CARES Act funding. This constituted arbitrary and capricious action because the agency failed to consider an important aspect of the problem and failed to rely on the record and information before it.

*Second*, the District Court erred in finding that no presumption of reviewability applies to the funding decisions made under Title V of the CARES Act. Nothing in Title V precludes review of the Government's spending decisions. *Confederated Tribes of the Chehalis Reservation v. Mnuchin* ("*Chehalis*"), — F.3d —, No. 20-5204, 2020 WL 5742075, *3 (D.C. Cir. 2020).

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*Washington v. Washington Metro. Area Transit Auth.*, 897 F.3d 314, 334 (D.C. Cir. 2018), *cert. denied*, 140 S. Ct. 1198, 206 L. Ed. 2d 724 (2020) (same).

Plaintiffs further incorporate by reference its prior briefing and arguments submitted at oral argument.

3. *Plaintiffs Face Irreparable Harm in the Absence of an Injunction*

The Tribe will suffer irreparable harm if the Secretary disburses the remaining CARES Act CRF funds sought by the Tribe Before this case can be fully and finally litigated. And, if the Chehalis Motion is granted, the Secretary will disburse the remaining funds elsewhere - some of which should be allocated to the Tribe based on accurate population data. If the remaining funds are disbursed before this Court can rule on the Tribe's appeal, the Tribe will be harmed a second time.

The District Court below has already found that the Tribe will face irreparable harm in this case. [S-App'x 8, n. 3, Dkt. 43, p. 8 n. 3; *see also* Dkt. 48, p. 3 (adopting its prior conclusions on the PI)]. And, in both its brief and at oral argument in this appeal, the Secretary did not dispute irreparable harm exists, in response to a specific question from the panel. Lastly, this Court has recognized the emergency nature of this appeal by granting the Tribe's motion to expedite resolution of this case. *See* September 25, 2020, USCA Doc. No. 186346. Plaintiff filed that motion to seek an expedited appeal and resolve the merits of this matter before the end of the year. A stay or injunction that precludes the Government

from disbursing $12 million of the remaining funds is the only way to prevent irreparable harm until such time that this matter is resolved.

To constitute irreparable harm, an injury "must be 'certain and great,' 'actual and not theoretical,' and 'of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm.'" *FOP Library of Cong. Labor Comm. v. Library of Congress*, 639 F. Supp. 2d 20, 24 (D.D.C. 2009). "The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation weighs heavily against a claim of irreparable harm." *Id*. But here, there is no adequate compensatory relief available. Without injunctive relief pending appeal, the risk is great and imminent that *all* of the remaining CARES Act funds will be expended, thereby depriving the Tribe of the primary relief it seeks.

"[T]his circuit's case law unequivocally provides that once the relevant funds have been obligated, a court cannot reach them in order to award relief." *City of Hous. v. HUD*, 24 F.3d 1421, 1426 (D.C. Cir. 1994)*; see also Ambach v. Bell*, 686 F.2d 974, 986 (D.C.Cir.1982) ("Once the chapter 1 funds are distributed to the States and obligated, they cannot be recouped. It will be impossible in the absence of a preliminary injunction to award the plaintiffs the relief they request if they should eventually prevail on the merits."); *Population Inst. v. McPherson*, 797 F.2d 1062, 1081 (D.C.Cir.1986) (noting that "if the government in the instant case

is permitted to distribute the $10 million to other organizations, the appeal will become moot."). "Thus, to avoid having its case mooted, a plaintiff must both file its suit before the relevant appropriation lapses *and* seek a preliminary injunction preventing the agency from disbursing those funds." *City of Houston, Tex. v. HUD*, 24 F.3d at 1426–27. The Tribe has already done the former; now it must seek the latter to ensure that potential award monies are not disbursed if the Chehalis Motion is granted prior to issuance of a decision here.

Because the district court declined to grant preliminary injunctive relief, the Secretary may obligate and distribute the remaining CARES Act funds at any time if the Chehalis Motion is granted. The moment the Secretary does so, the Tribe will suffer irreparable injury. "It will be impossible … to award the plaintiffs the relief they request if they should eventually prevail on the merits." *Ambach v. Bell*, 686 F.2d 974, 986 (D.C. Cir. 1982). Thus, a direct and immediate threat exists that in the time it would take for this Court to consider this appeal—even in an expedited fashion, the remaining CARES Act funds will be irretrievably dispersed, depriving the Court of the ability to provide the Tribe with the full measure of relief it seeks. *See Population Inst. v. McPherson*, 797 F.2d 1062, 1081 (D.C. Cir. 1986) (granting injunction pending appeal because "this court will be unable to grant effective relief" if the agency distributes to other groups the funds plaintiff sought to enjoin the agency from withholding).

4. *Injunctive Relief Will Not Harm Third Parties and the Public Interest Favors the Requested Emergency Injunctive Relief.*

Granting a stay or injunction pending appeal would serve the public interest and would not harm the government. "The public has an interest in assuring that public funds are appropriated and distributed pursuant to Congressional directives." *Population Inst.*, 797 F.2d at 1082 (granting motion for injunction pending appeal). Indeed, if the Government "is not enjoined from distributing the funds to others, and appellant prevails on appeal, the public interest will be frustrated by the failure to distribute the funds as dictated by Congress." *Id.* "By contrast, the public interest will be furthered by an injunction pending appeal, which will preserve [Plaintiff's] ability to receive the funds if appellant is successful on appeal." *Id.* Moreover, "[t]here is generally no public interest in the perpetuation of an unlawful agency action." *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016).

Beyond these governmental interests, there is also a critical and imminent need to redress the impact of the current public health emergency on the Tribe. Congress appropriated the CARES Act funds to specifically permit state, local, and tribal governments to respond to the emergency. To date, over 290,000 people in the U.S. and on tribal lands have died because of COVID-19. This past week, approximately 2,500 have died due to COVID-19 *every day*. And, in Oklahoma, where the Tribe is located, new COVID-19 cases and deaths continue to grow each

day.[2] An urgent response—and the funds to enable that response—is needed now more than ever. "It goes almost without saying, of course, that promoting public health—especially during a pandemic—is in the public interest…." *Nat'l Immigration Project of Nat'l Lawyers Guild v. Exec. Office of Immigration Review*, 2020 WL 2026971, at *12 (D.D.C. Apr. 28, 2020). Without access to these funds, and an injunction to ensure that the funds remain available, both the Tribe and the public health at large will be significantly damaged.

### B. In the Alternative, The Tribe Seeks an Emergency Stay of the Secretary's Decision under Rule 18.

The Tribe also seeks, as an alternative basis of relief, an administrative stay of the Secretary's decision below to the extent that it would result in the disbursement of the $12 million dollars that would otherwise be directed towards the Shawnee Tribe.

Federal Rule of Appellate Procedure 18(a)(2) provides that "[a] motion for a stay may be made to the court of appeals or one of its judges." The motion must "show that moving first before the agency would be impracticable." *Id.* The grant of a stay is a matter of judicial discretion that is "dependent upon the circumstances of the particular case." *Nken v. Holder*, 556 U.S. 418, 419 (2009). A

[2] *See generally* Oklahoma State Department of Health COVID-19 Dashboard, available online at https://oklahoma.gov/covid19.html (last accessed December 9, 2020) (noting that on December 11, 2020 alone, over 3,900 new positive tests were reported and 27 deaths occurred in Oklahoma).

court "'in the exercise of judgment' must "'weigh competing interest and maintain an even balance' between the court's interests in judicial economy and any possible hardship to the parties[.]" *Belize Social Dev. Ltd. v. Government of Belize*, 668 F.3d 724, 732–33 (D.C. Cir. 2012) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254–55 (1936)). Courts, however, have routinely held that a stay pending appeal is warranted in cases presenting difficult and unsettled legal questions. *See Akiachak Native Community v. Jewell*, 995 F.Supp.2d 7, 13 (D.D.C. 2014) (granting in part stay pending appeal) ("Though the Court disagrees with Alaska's position, and finds there to be a low likelihood of success on the merits, it recognizes that the case presented difficult and substantial legal questions . . . .").

Here, based on the Secretary's prior refusal to agree to a stay or injunction involving the funds at issue, and the Chehalis Motion pendency, it would be impracticable for the Tribe to move administratively before the agency for this relief. Time is limited. The Secretary has unambiguously indicated his intention to disburse these funds upon court order.

Moreover, this case involves a looming threat that would hamper the Tribe's ability to respond to a public emergency. It also involves substantial legal questions the Court will soon be resolving. Until that occurs, a stay is necessary to preserve the *status quo* that the funds remain frozen until a final judicial resolution is reached. There would be substantial harm to the Tribe and the public health at

large if these funds are dissipated by the Secretary.

In further support, the Tribe incorporates by reference its prior briefing and arguments seeking a stay or injunction pending appeal in further support of its request for an administrative stay.

### C. The Tribe Requests that the Court Set an Expedited Briefing Schedule on This Motion.

Given the urgent nature of this matter, and the impending December 30th deadline, the Tribe requests that the Court issue an expedited briefing schedule on this motion as noted in Rule 27(a)(3). The Tribe respectfully suggests that seven (7) days to respond and two (2) days to reply would be appropriate under the circumstances.

## IV. CONCLUSION

The Tribe respectfully requests that this Court grant a stay or injunction that prohibits the Secretary from disbursing or distributing $12 million of the remaining CARES Acts funds at issue in this matter until further order of court.

DATED this 11th day of December, 2020.

Respectfully submitted,

THE SHAWNEE TRIBE

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# Exhibit A

**United States Court of Appeals**
**District of Columbia Circuit**
Consolidated cases 20-5204, 20-5205, 20-5209

Confederated Tribes of the Chehalis Reservation, et al.,
Appellants
v.

Steven T. Mnuchin, in his official capacity as Secretary of U.S. Department of the Treasury, et al.,
Appellees

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# MOTION FOR ISSUANCE OF MANDATE AND ORDER REQUIRING THE UNITED STATES TO PROMPTLY COMPLY WITH THE MANDATE

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The Ute Indian Tribe of the Uintah and Ouray Reservation (Ute Indian Tribe) moves for issuance of this Court's mandate and for an order requiring the United States to promptly comply with that mandate.

Prior to filing this motion, the Tribe sought the position of opposing parties, and at least one of the two appellee groups, the Alaska Native Corporations, will oppose the motion

## DISCUSSION OF LAW

### I. THIS COURT MUST ISSUE ITS MANDATE THAT REMAINING CARES ACT FUNDS MUST BE DISTRIBUTED TO THE FEDERALLY RECOGNIZED TRIBES.

On September 25, 2020, this Court issued its decision on appeal.

Federal Rule of Appellate Procedure 41(b) provides:

> The court's mandate *must* issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing, or motion for stay of mandate, whichever is later. (emphasis added).

Consistent with that rule, this Court ordered "that the Clerk withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc." Doc. 1863447 (Sept. 25, 2020).

That stay of issuance of the mandate has now expired. There is no petition for rehearing or motion for stay of the mandate pending before this Court.

While Appellees have filed a petition for a writ of certiorari, they have not filed a motion for stay of the mandate or stay of enforcement with the Supreme Court.

Under Federal Rule of Appellate Procedure 41, this Court's mandate must issue.

## II. THIS COURT SHOULD DIRECT THAT THE UNITED STATES PROMPTLY COMPLY WITH THE MANDATE OF THIS COURT.

Once the Court issues its mandate, the United States would have a duty to promptly comply with that mandate. *E.g., Washington v. Clemmer*, 339 F.2d 715 (D.C. Cir. 1964). It is appropriate for this Court to include within its mandate a requirement that the United States promptly comply with the mandate. *E.g. Boumediene v. Bush*, 553 U.S. 723, 795 (2008) (requiring "prompt" compliance with mandate); *Gallop v. Cheney*, 667 F.3d 226 (8th Cir. 2012); *Dewitt v. United States*, 383 F.2d 542, 544(5th Cir. 1967). *C.f., Washington*, 339 F.3d at 720 (This Circuit Court retained jurisdiction over a case after it issued the mandate so that it could assure prompt compliance with its mandate).

Under the unique facts of this case, the Court should expressly require that the United States promptly comply with the mandate. Under the CARES Act, the Tribes must not only receive the money, they must also spend or "incur" expenditure of the funds by **December 30, 2020**.[1] 42 U.S.C. § 801(d)(3). Under section 801, tribes

[1] On September 30, this Court issued an order assuring that the appropriation would not lapse at the end of the fiscal year. That order does not impact the pending expiration of the statutory deadline by which Tribes must incur expenditure of the funds.

were supposed to have more than eight months to spend or incur expenditure.[2] That time is now down to only a few weeks. Time is of the essence.

Tribes can only use CARES Act funds for "necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019. The expenses cannot have been in the tribal budgets prior to March 27, 2020, and the expenses must be "incurred" by December 30, 2020. 42 U.S.C. § 801(d).

The Department of the Treasury initially interpreted "incurred" to mean that the money must be spent by December 30. It has subsequently slightly changed its interpretation, so that its current interpretation is:

> [F]or a cost to be considered to have been incurred performance or delivery must occur during the covered period [ending December 30, 2020] but payment of funds need not be made during that time (though it is generally expected that this will take place within 90 days of a cost being incurred).

https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf at 2 (attached hereto, for the Court's convenience, as Exhibit A).

The Tribes estimate that the Department of the Treasury has approximately $535,000,000 left to distribute to the federally recognized tribes. Doc. 1864008 at 6. Treasury has not published the amount that would be distributed to any individual

[2] In the CARES Act, Congress directed the Secretary to distribute funds to tribes within 30 days of March 27, 2020. 42 U.S.C. § 801(b)(1).

tribe. Treasury has not informed the Movant Ute Indian Tribe of the amount that the Ute Indian Tribe will receive if this Court's order is enforced, and the Ute Indian Tribe does not believe that Treasury has informed any other tribes of the amounts they would receive.[3]

Under this existing scenario, the Ute Indian Tribe cannot meet the CARES Act requirement that it incur expenditures of CARES Act funding until the Secretary complies with this Court's mandate. The Tribe and other tribes have not even been provided the funds, and therefore cannot go on to the next step of incurring expenditure of those funds by December 30, 2020. Additionally, the Ute Indian Tribe does not even know the amount of funds which it can incur to spend under the CARES Act.

The United States and other appellees have had ample time to move for a stay of the mandate or other stay, but have chosen not to file a motion for stay. The Tribe does not believe that the Appellees would have been able to meet the requirement for a stay of mandate pending resolution of its petition for a writ of certiorari, Fed.

[3] At the time the Tribe moved for injunctive relief, the United States had not disclosed the amount of money that the Tribe was expected to receive under the CARES Act. Dkt. 5-1 ¶14. The undersigned has confirmed that, as relates to the remaining $535,000,000 currently held by the Department of the Treasury, the relevant fact remains unchanged—the United States had not disclosed to the Tribe the amount that it will receive when the United States complies with this Court's mandate.

R. App. Proc. 41(d), but under the current posture, the Court need not consider that issue because no Appellee has moved for a stay of the mandate.

Under the current posture, once the mandate is issued, the United States would have a duty to comply with that mandate—to distribute remaining funds to the Tribes, so that that Tribes can then make the purchases of goods and services by the statutory deadline of December 30, 2020. It should be ordered to promptly make those payments.

## CONCLUSION

For the reasons discussed above, the Ute Indian Tribe moves for issuance of this Court's mandate and for an order requiring that the United States promptly comply with that mandate.

Respectfully submitted this 7th day of December, 2020.

*/s/ Jeffrey S. Rasmussen*
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## CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Federal Rule of Appellate procedure 27 and Circuit Rule 27, because this brief contains 1113 words, excluding the parts of the exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and D.C. Circuit Rules. I relied on my word processor to obtain the count and it is Microsoft Office Word 2020.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2020 in Times New Roman, 14-point font.

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

By: /s/ *Jeffrey S. Rasmussen*
Jeffrey S. Rasmussen

## CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY REDACTIONS

I hereby certify that a copy of the foregoing **MOTION FOR ISSUANCE OF MANDATE AND ORDER REQUIRING THE UNITED STATES TO PROMPTLY COMPLY WITH THE MANDATE** as submitted in Digital Form via the court's ECF system, is an exact copy of the written document filed with the Clerk and has been scanned for viruses with Webroot, dated 12/07/2020, and, according to the program, is free of viruses. In addition, I certify all required privacy redactions have been made.

By: /s/ *Jeffrey S. Rasmussen*
Jeffrey S. Rasmussen

## CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of December, 2020, a copy of this **MOTION FOR ISSUANCE OF MANDATE AND ORDER REQUIRING THE UNITED STATES TO PROMPTLY COMPLY WITH THE MANDATE**, was served via the ECF/NDA system which will send notification of such filing to all parties of record.

By: /s/ *Jeffrey S. Rasmussen*
Jeffrey S. Rasmussen