UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THE SHAWNEE TRIBE, Plaintiff, v. STEVEN T. MNUCHIN, in his official capacity as Secretary of the United Stated Department of the Treasury; et al., Defendants.	)	Case No. 4:20-cv-290-JED-FHM

RESPONSE TO DEFENDANTS' MOTION TO TRANSFER

The Shawnee Tribe responds as follows to Defendants' Motion to Transfer [Dkt. 20], which was separately briefed in their Response to Plaintiff's Motion for Preliminary Injunction. [Dkt. 21].

Contrary to Defendants' assertions in their Response brief, within which they address their Motion to Transfer, the instant case brought by The Shawnee Tribe does not replicate a case litigated before the District Court for the District of Columbia (D.C.) in *Prairie Band Potawatomi Nation v. Mnuchin*. Further contrary to Defendants' assertions, this case does not present the same arguments that were made in *Prairie Band*. It is only through a gross mischaracterization of The Shawnee Tribe's position that Defendants can attempt to make this case seem duplicative. While Defendants pretend not to understand The Shawnee Tribe's position and feign inability to comprehend nuances or even vast differences in legal argument, those mistakes are exposed and debunked in The Shawnee Tribe's Reply in Support of its Motion for Preliminary Injunction filed on this date. As the basis for their Motion to Transfer, the mischaracterization of The Shawnee Tribe's case as replicate is without merit.

In addition, nowhere in the CARES Act does it state that the District Court in D.C. is the

sole permissible venue for the resolution of disputes arising under the Title V of the CARES Act. Courts within the Tenth Circuit have accepted and ruled in cases arising under Title V of the CARES Act. One notable example is *In re Roman Catholic Church of Archdiocese of Santa Fe*, 615 B.R. 644 (Bankr. D.N.M. May 1, 2020), where the New Mexico District Court did not relinquish jurisdiction and proceeded to lambaste the Department of Treasury for withholding funds from eligible recipients in violation of the CARES Act. First, the court there acted quickly, recognizing that "[t]o provide any effective relief, and/or to avoid a substantial damages claim from accruing, an immediate decision was necessary." *Id.* at 648, n.1. The court then proceeded without hesitation to find that Treasury had acted arbitrarily and capriciously in violation of the Administrative Procedures Act by inventing criteria that excluded otherwise eligible recipients from compensation. *Id.* at 655 ("The Court concludes that Defendant's decision to insert underwriting criteria into the PPP, and then to use the bankruptcy debtor test as the sole underwriting criterion, is both arbitrary and capricious."). This is not dissimilar from Defendants' mistake here, where they created a sole criterion – participation in a discretionary federal Indian housing block grant program – to determine what funds would be provided to tribes, as explained in The Shawnee Tribe's Reply brief. There, as here, the government acted "[w]ith only the flimsiest of justifications" resulting in an "inexplicable and highhanded decision to rewrite . . . eligibility requirements in [a] way [that] was arbitrary and capricious [and] beyond its statutory authority." *Id.* at 657. The sister court in *Roman Catholic Church* did not abdicate jurisdiction and did not shy away from finding the government's conduct unlawful. This Court should take heart; it may do the same thing.

Defendants' argument for transferring this case to its favored venue is telling in another very important respect. Defendants urge this Court to relinquish jurisdiction so that the D.C. District Court may "resolve this matter in a manner consistent with [its] prior rulings."

[Dkt. 21, at 9]. The D.C. District Court has made no "prior rulings" pertaining to The Shawnee Tribe. What Defendants openly seek is the transfer of this case to a jurisdiction perceived to be most favorable to them because they believe (perhaps wrongly) that it will simply reapply its "prior rulings" to The Shawnee Tribe, notwithstanding the differences in the Tribe's identity, position, and arguments. What any federal court of competent jurisdiction should do is resolve this case in a manner consistent with the CARES Act, the APA, and other applicable law. It is revealing of Defendants' motive that they do not to ask for that. Instead of seeking a resolution based on applicable law, they seek a resolution based on what they presume will be a rubber stamp dismissal of The Shawnee Tribe's concerns.

At the end of the day, The Shawnee Tribe recognizes that, under *Cherokee Nation v. Nash*, 724 F. Supp. 2d 1159, 1164 (N.D. Okla. 2010), the Court may transfer this case as requested by Defendants. If it chooses to do so, The Shawnee Tribe respectfully asks that it do so quickly, as substantive decisions need to be made, and that it do so with the instruction that this case be decided on its own merits in accordance with applicable law and not through the imposition of pre-determined orders handed down in other cases with different parties, arguments, and facts.

Dated this 23rd day of July, 2020.

/s/ Pilar M. Thomas

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CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that on the 23rd of July, 2020, the foregoing document was filed with the Court using the CM/ECF system and served which provided service to all parties through their attorney of record.

/s/ Dawn McCombs