

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

FLANDREAU SANTEE SIOUX TRIBE, A  
FEDERALLY RECOGNIZED INDIAN  
TRIBE; SANTEE SIOUX NATION, and BIG  
SANDY BAND OF WESTERN MONO  
INDIANS,

Plaintiffs,

vs.

JOVITA CARRANZA, IN HER OFFICIAL  
CAPACITY AS ADMINISTRATOR OF THE  
UNITED STATES SMALL BUSINESS  
ADMINISTRATION; and STEVEN  
MNUCHIN, IN HIS OFFICIAL CAPACITY  
AS SECRETARY OF THE UNITED STATES  
DEPARTMENT OF THE TREASURY,

Defendants.

4:20-CV-04070-RAL

ORDER DENYING TEMPORARY  
RESTRAINING ORDER AND TO SET  
TIME FOR HEARING ON PRELIMINARY  
INJUNCTION MOTION

Yesterday, April 23, 2020, Plaintiff Flandreau Santee Sioux Tribe (the Tribe) filed a Verified Complaint against Defendant Jovita Carranza in her official capacity as Administrator of the United States Small Business Administration and Steven Mnuchin in his official capacity as Secretary of the United States Department of the Treasury (collectively “the Defendants”). Today, the Tribe has filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction, Doc 3, together with a Memorandum in support thereof, Doc. 4. In the Emergency Motion, the Tribe seeks oral argument. Doc. 3. The Tribe’s complaint and other pleadings make clear that this case presents a very time sensitive dispute concerning the Tribe’s contention that,

contrary to the language of the CARES Act, the Defendants have adopted regulations excluding the Tribe's casino and lending businesses from qualifying for the Paycheck Protection Program (PPP). The PPP recently received additional funding after the initial funding of the PPP was quickly exhausted. The Tribe has over 250 employees who have been furloughed from jobs with the Tribe's casino and lending businesses, and the Tribe's inability to maintain its payroll threatens irreparable injury, particularly when the PPP funding may be short-lived.

Even though this Court fully understands the Tribe's position and argument, the Tribe's request for a temporary restraining order can be denied at this time. Under Rule 65(b) of the Federal Rules of Civil Procedure, a temporary restraining order may issue "only if: (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required." Fed. R. Civ. P. 65(b). The Tribe did not file any certification from its attorney of what, if any, efforts were made to give notice of the filing of the temporary restraining order. Also, this Court is unconvinced that waiting until next week to hear from both the Tribe and the Defendants will result in immediate and irreparable injury, loss, or damage to the Tribe. Thus, the Tribe at this time is not entitled to entry of a temporary restraining order.

This Court, however, wants to hear from both sides to this lawsuit next week. The Verified Complaint appears to frame a purely legal question and one, as recognized above, of a very time sensitive nature. Therefore, it is hereby

ORDERED that the Tribe's request for a temporary restraining order is denied. It is further

ORDERED that the Clerk of Court sent to Ronald Parsons the United States Attorney for the District of South Dakota and to his Chief Civil Case Deputy Diana Ryan all pleadings filed in this case, including this Order. It is further

ORDERED that counsel participate with this Court's judicial assistant to set a hearing on the Motion for Preliminary Injunction to occur next week.

DATED this 24th day of April, 2020.

BY THE COURT:



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ROBERTO A. LANGE  
CHIEF JUDGE