

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

CHEYENNE RIVER SIOUX TRIBE,

Plaintiff,

v.

**STEVEN MNUCHIN, SECRETARY,
UNITED STATES DEPARTMENT OF THE
TREASURY,**

Defendant.

Case No. 1:20-cv-01059

**DECLARATION OF CHAIRMAN
HAROLD C. FRAZIER IN SUPPORT
OF MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

I, Harold C. Frazier, hereby declare:

1. My name is Harold C. Frazier and I am Chairman of the Cheyenne River Sioux Tribe.
2. I was first elected Chairman in 2002 and I held that office until 2006. I was re-elected as Chairman in 2014 and have remained in office since then. I participated in the consultation and commenting process between Tribal leaders and the Department of the Treasury for the distribution of the \$8 billion dollar distribution for Tribal governments. There was no discussion that indicated that ANCs would be included in the interpretation of Title V. On April 9th, 2020, I and several other Tribal governments learned of a letter to Secretary Mnuchin from the Alaska Congressional delegation and several ANCs to demand to be included in the Tribal relief fund. This was appalling to the Tribe and to everyone else working on the Tribal CARES initiative, because none of us ever considered that for-profit corporations with multi-billion dollar revenues could have been considered “Tribal governments.” Tribal governments, including ours, were then stuck with the potential threat of sharing emergency funds, distributed through a formula in the statute, with the “expenditures” of billion-dollar for profit corporations. The Tribes have not received any answer to our objections about ANC inclusion from either the Treasury or the Interior.

3. Our people have never fully recovered from the punishment and negligence of the United States government in the years following the Great Sioux Wars and the Treaties of Fort Laramie. We were forced to stay on our now much diminished reservations without the promised and treated-for support of the Federal government. The supplies came late, if ever, and were often spoiled and contaminated. The legacy of those limitations and broken treaties lives on in the broken towns and food deserts of the modern-day Cheyenne River Reservation, despite our best efforts to improve the quality of life of our people.

4. The Cheyenne River Reservation consists of 2,833,158 acres of trust land in an area close to 60 miles long and 90 miles wide. Of the Tribe's 21,965 enrolled members, about 10,000 of them live on the Reservation in 22 communities scattered across the Reservation. The Tribe's economy is primarily agricultural, with \$6 million dollars of the Tribe's General Fund coming from agricultural leases, which are at risk because of the pandemic's impact on this year's growing season.

5. The Reservation has 1,700 miles of road, but it only receives federal funding to maintain 300 miles of it. During some seasons, precipitation leaves some roads nearly impassible. This situation was made more dire by the historic flooding in March 2019 which closed several main roads and damaged miles upon miles of roads, bridges, and ducts. The road condition issues are compounded by the fact that many parts of the Reservation do not have cell phone or internet service, which makes it even harder for residents to access essential care and education needs.

6. In 2011, Ziebach County, one of two counties almost entirely within the boundaries of our Reservation, was the poorest county in the United States, with about 62% of residents living at or below the poverty line. Ziebach County, SD – Profile Data – Census Reporter, <https://censusreporter.org/profiles/05000US46137-ziebach-county-sd/>, attached hereto as **Exhibit**

A.

7. Even worse, Native Americans have a much higher rate of many chronic illnesses, making a disproportionate number of Tribal members at high risk if they catch the virus. The CDC includes the following people as high-risk for experiencing severe illness if they contract COVID-19: people 65 years and older; people who live in care facilities such as nursing homes; people suffering from illnesses such as chronic lung disease; moderate to severe asthma; diabetes, chronic kidney disease requiring dialysis; liver disease; and people who are immunocompromised, severely obese, or have acute heart conditions. *See Centers for Disease Control and Prevention, People Who Are at Higher Risk for Severe Illness* (April 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>, attached hereto as **Exhibit B**. The CDC further recommends that people stay home as much as possible, wash or cleanse their hands often, keep at least six feet away from other people, and disinfect commonly touched items regularly. *Id.*

8. A study of the death rate among American Indians and Alaska Natives during the 2009 H1N1 Influenza A Pandemic uncovered that American Indians and Alaska Natives died at **four times** the rate of all other races and ethnicities. *See Centers for Disease Control and Prevention, Deaths Related to 2009 Pandemic Influenza A (H1N1) Among American Indian/Alaska Natives – 12 States, 2009*, 58 CDC MMWR 48, 1341-1344 (Dec. 11, 2009), attached hereto as **Exhibit C**. The CDC researchers also discovered that a greater percentage of American Indian/Alaska Natives had high-risk health conditions when compared with all other American populations combined. Further, the American Indian/Alaska Native decedents has asthma or diabetes about twice as frequently than the rest of the decedents combined (Asthma: 31% AI/AN vs. 14.1% Total Remaining Decedents; Diabetes: 45.2% AI/IN vs. 24% for Total Remaining Population

Decedents). The researchers concluded that contributing factors included that American Indians were two times as likely to have unmet medical needs that they could not afford, as well as impoverished living conditions.

9. Despite the Tribe's proportionally high need for healthcare facilities, the closest facility able to provide advanced medical treatment for critical COVID-19 patients is an off-Reservation facility 175 miles (three hours) away. The only on-Reservation IHS is in Eagle Butte, South Dakota at the Tribal Headquarters, which is a 90-mile drive for some tribal members. Our IHS facility has 8 inpatient beds, 6 ventilators, 2 negative pressure rooms, inadequate staff, and **zero respiratory therapists** to care for our 10,000 Reservation residents.

10. The Reservation is particularly at risk because we are close to COVID-19 hotspot Sioux Falls, South Dakota. There is currently no statewide lockdown in South Dakota. Many Tribal members live in Sioux Falls and go back and forth between the Reservation and the city, which is why our checkpoints are so important. Without them, infection will rapidly reach the Reservation.

11. Many of our Tribal members have limited access to food and supplies even during optimal situations, which makes the impacts of the Coronavirus that much more extreme. Most of the Reservation is rural, and there are few community buildings in which to isolate the sick or create safety shelters. Making matters worse, many roads (including BIA maintained roads and bridges) were critically damaged or completely destroyed by the flooding in March of 2019, and they have yet to be repaired. This makes it even harder for residents to get access to direly needed supplies.

12. Because of its rural nature, much of the Reservation is a "food desert," and reliance on programs such as USDA's SNAP and FDPIR is necessary to ensure sufficient access to food. Despite these programs, lack of access to fresh meat has arisen as another facet of the crisis. The Tribe is supplementing with fresh beef from local producers to fill this need, but it is yet another

balance between human and financial costs.

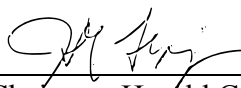
13. On the Cheyenne River Reservation, most of our 2,800 homes have between five to seven people living in them, with limited ability to isolate the sick. As a result, the infection of any one of those persons would result in the likely infection of at least four to six others, which is a significantly higher infection rate than most other areas of the United States. Additionally, the substantial homeless population of the Reservation cannot socially distance safely and effectively if they lack sufficient access to hygiene and sanitation, are stuck in crowded shelters, or if they are unsheltered. As a result, this population is at serious risk of infection, as has been seen in the homeless populations of cities such as San Francisco and Los Angeles.

14. We are taking every step we can to protect our Tribe, but the strain on our human and financial resources is taking its toll. We have very few trained personnel who can remain on duty for our healthcare, human welfare, and legal facilities because of the number of personnel who are high risk. Those that remain are working around the clock.

15. Without additional funding, we will not be able to continue to offer the protections and support currently in place for our People. Termination of those efforts will, in all likelihood, result in greater casualties from the pandemic.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of April, 2020 in _____, South Dakota,



Chairman Harold C. Frazier