

UNITED STATES DISTRICT COURT
FOR THE DISTRICT COLUMBIA

THE SHAWNEE TRIBE,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:20-cv-01999 APM
)	
STEVEN T. MNUCHIN, in his official capacity)	
as Secretary of the United States Department of)	
the Treasury; UNITED STATES DEPARTMENT)	
OF THE TREASURY; DAVID BERNHARDT, in)	
his official capacity as Secretary of the United)	
States Department of the Interior; UNITED)	
STATES DEPARTMENT OF THE INTERIOR)	
)	
Defendants.)	

**REPLY IN SUPPORT OF SUPPLEMENTAL BRIEF OF
THE SHAWNEE TRIBE RE: REVIEWABILITY**

The Court made a narrow request of the Tribe to provide cases that show instances in which a court reviewed one portion of an agency decision when another portion of that same or related decision was deemed unreviewable. Curiously, Defendants interpreted this narrow request of the Tribe as a request for argument on the merits of the Tribe's APA claim. To the contrary, the Court requested The Shawnee Tribe alone to point it to cases that may support such a proposition and this request did not provide open season for Defendants to argue why a Rule 12(b)(1) motion is appropriate, absent any briefing whatsoever. Even more unreasonable is Defendants' invitation for this Court to grant a Rule 12(b)(6) motion sua sponte absent filing any motion whatsoever.

Defendants' rhetoric aside, the fact remains that The Shawnee Tribe, as requested by the Court, has pointed to court decisions where the courts have bifurcated reviewability decisions. Notwithstanding Defendants' out of turn plea to the Court to dismiss this case, more tellingly,

Defendants fail to cite any legal principles or cases that would prohibit this Court from reviewing Treasury's use of false data merely because its selection of methodology may be discretionary. Thus, the decision to use the false data is reviewable.

Respectfully dated this 14th day of August, 2020.

Respectfully submitted,

/s/ Jonathan P. Labukas

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CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that on the 14th of August, 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/ Jonathan P. Labukas
