

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-11479

CHAD EVERET BRACKEEN; JENNIFER KAY BRACKEEN; STATE OF TEXAS; ALTAGRACIA SOCORRO HERNANDEZ; STATE OF INDIANA; JASON CLIFFORD; FRANK NICHOLAS LIBRETTI; STATE OF LOUISIANA; HEATHER LYNN LIBRETTI; DANIELLE CLIFFORD,

Plaintiffs - Appellees

v.

DAVID BERNHARDT, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR; TARA SWEENEY, in her official capacity as Acting Assistant Secretary for Indian Affairs; BUREAU OF INDIAN AFFAIRS; UNITED STATES DEPARTMENT OF INTERIOR; UNITED STATES OF AMERICA; ALEX AZAR, In his official capacity as Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants - Appellants

CHEROKEE NATION; ONEIDA NATION; QUINAULT INDIAN NATION; MORONGO BAND OF MISSION INDIANS,

Intervenor Defendants - Appellants

Appeals from the United States District Court
for the Northern District of Texas

ON PETITIONS FOR REHEARING EN BANC

(Opinion August 9, 2019, Modified August 16, 2019,
5 Cir., 2019, 937 F.3d 409)

No. 18-11479

Before OWEN, Chief Judge, JONES, SMITH, STEWART, DENNIS, ELROD, SOUTHWICK, HAYNES, GRAVES, HIGGINSON, COSTA, WILLETT, DUNCAN, ENGELHARDT, and OLDHAM, Circuit Judges.¹

BY THE COURT:

A member of the court having requested a poll on the petitions for rehearing en banc, and a majority of the circuit judges in regular active service and not disqualified having voted in favor,

IT IS ORDERED that this cause shall be reheard by the court en banc with oral argument on a date hereafter to be fixed. The Clerk will specify a briefing schedule for the filing of supplemental briefs.

¹ Judge Ho is recused and did not participate in this decision.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

November 7, 2019

TO COUNSEL LISTED BELOW:

No. 18-11479 - Chad Everet Brackeen, Et Al. v.
David Bernhardt, Etc., Et Al.
USDC No. 4:17-CV-868

Dear Counsel,

Enclosed is the court's order filed this date directing this case be reheard en banc with oral argument.

Under Fifth Circuit Local Rule 41.3 this order vacates the previous opinion and judgment of this court and stays the mandate.

Appellants will have until December 6, 2019, to file their en banc briefs, with a blue cover. Intervenor's brief, with a green cover, is due December 13, 2019. The appellees' en banc briefs, with a red cover, are due in this office not later than January 7, 2020. You will be requested to furnish twenty (22) copies of your en banc brief after the electronic filing is reviewed and processed. The case will be heard during the week of January 20, 2020. Counsel for the parties will receive adequate notice as to the exact date and time for the presentation of the oral argument.

We request that the parties and intervenor forward twenty (22) copies of their previously filed merits briefs and record excerpts, for the use of the en banc court. As you did previously, we request that all copies be spirally bound. **These additional copies are due in the Clerk's Office by not later than Friday, November 22, 2019.** Please contact me if you have any questions.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____

GERALYN A. MAHER
Calendar Clerk
504-310-7630

Mr. Matthew Dempsey McGill
Mr. Adam Howard Charnes
Mr. Paul Spruhan

Mr. Kyle Douglas Hawkins
Ms. Rachel Heron

No. 18-11479

cc: Hon. Reed Charles O'Connor
Mr. Lochlan Francis Shelfer
Ms. Beth Ellen Klusmann
Mr. Keith Michael Harper
Ms. Christina Riehl
Mr. Bryan N.B. King
Ms. Margaret A. Little
Ms. Michelle T. Miano
Mr. Samuel Daughety
Ms. Rose N. Petoskey
Ms. Danielle Mary Spinelli
Ms. Kendra J. Hall
Ms. Racheal M. White Hawk
Mr. Benjamin Michael Flowers
Mr. David J. Hacker
Ms. Kathryn Fort
Mr. Eric Grant
Mr. Klint Cowan
Mr. Timothy Mason Sandefur
Mr. Hyland Hunt
Ms. Erin C. Dougherty Lynch
Mr. Daniel Lewerenz
Mr. David Steven Coale
Mr. Alan E. Schoenfeld
Ms. Kerry Kay Patterson
Mr. William S. Consovoy
Ms. Krystal Brunner Swendsboe