

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

United States Court of Appeals
Fifth Circuit

FILED

November 7, 2019

Lyle W. Cayce
Clerk

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

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

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 majority of the circuit judges in regular active service and not disqualified having voted in favor, on the Court's own motion, to rehear this case en banc,

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.

IT IS FURTHER ORDERED that the petition for rehearing en banc filed by appellees Chad Everet Brackeen, Jennifer Kay Brackeen, Altagracia Socorro Hernandez, Jason Clifford, Frank Nicholas Libretti, Heather Lynn Libretti, Danielle Clifford, is moot.

IT IS FURTHER ORDERED that the petition for rehearing en banc filed by appellees State of Texas, State of Indiana, State of Louisiana, is moot.

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